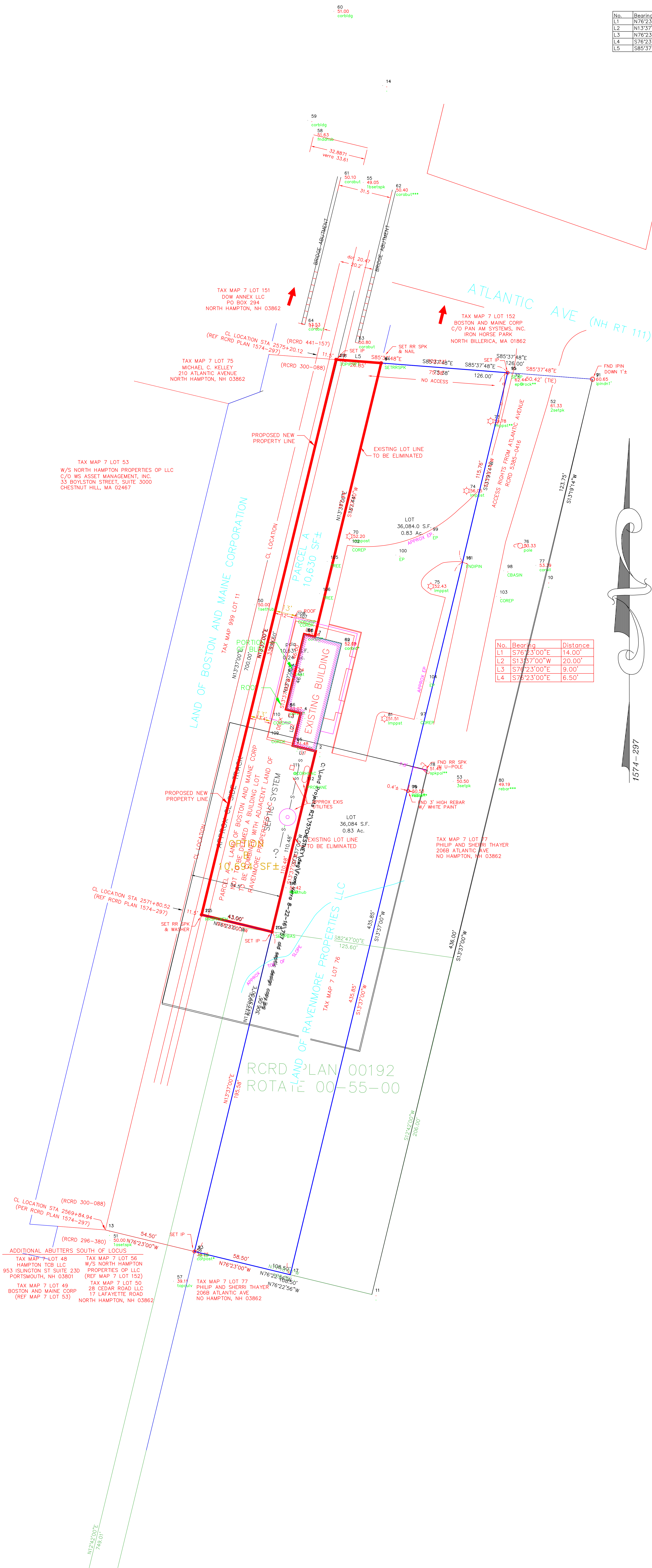


No.	Bearing	Distance
L1	N76°23'00"W	14.00'
L2	N13°37'00"E	20.00'
L3	N76°23'00"W	9.00'
L4	S76°23'00"E	6.50'
L5	S85°37'48"E	26.85'

No.	Bearing	Distance
L1	S76°23'00"E	14.00'
L2	S13°37'00"W	20.00'
L3	S76°23'00"E	9.00'
L4	S76°23'00"E	6.50'



Command= 210-

Point#, Start#-End# or G#= 1-856

Bearing	Distance	Elev	Descrip	Pnt.	Northing	Easting	Type
-----02-11-2025-----12:15:32-----D:...\BMHOME13							
				1	5000.0000	5000.0000	
				2	5297.4574	5072.0541	TRA
				3	5300.7534	5058.4476	TRA
				4	5320.1912	5063.1561	TRA
				5	5322.3101	5054.4091	TRA
				6	5367.0171	5065.2386	TRA
				7	5365.4869	5071.5559	TRA
				8	5528.2205	5110.9755	TRA
				9	5518.6197	5236.6092	TRA
				10	5398.1991	5208.0973	TRA
				11	4974.4539	5105.4521	TRA
				12	4999.9975	5000.0017	TRA
				13	5012.8307	4947.0319	TRA
				14	5693.1554	5111.8292	TRA
				15	5522.4768	5186.1363	TRA
				16	5409.8312	5159.4654	TRA
				17	4986.2279	5056.8545	INT
				18	4988.2738	5030.0826	TRA
				19	4658.2191	4950.1323	TRA
				20	5190.0855	5046.0450	INT
				21	5691.3076	2976.8631	INT
				22	5200.2087	5004.2537	TRA
				23	5530.2663	5084.2046	INT
			midpt	24	5344.6636	5059.8239	TRA
				25	5197.8545	5013.9726	TRA
				26	5480.2573	5082.3800	TRA
				27	5478.9835	5099.0486	INT
	57.73		inst	28	5234.5664	5034.4129	INT
			rrspk	29	5200.2218	5004.2945	TRA
	52.67		setspk	30	5211.0855	5014.0050	SS
	52.83		setspk	31	5209.0599	5029.4233	SS
	52.55		setspk*	32	5244.7243	5022.3763	SS
	52.46		setspk	33	5239.8845	5037.8460	SS
	51.60		deck**	34	5305.7242	5043.4553	SS
	52.15		corbld**	35	5302.0508	5058.5468	SS
	52.06		deck***	36	5374.9880	5060.2565	SS
	52.68		edgpad	37	5232.3418	5018.5077	SS
	53.01		pad	38	5223.4215	5024.1654	SS
	52.67		pad	39	5221.1778	5032.6059	SS

JOB #14 757DEPOT [856]

Bearing	Distance	Elev	Descrip	Pnt.	Northing	Easting	Type
-----02-11-2025-----12:15:32-----D:... \BMHOME13							
	52.96		pad	40	5213.0614	5017.1127	SS
	52.98		pad	41	5210.9327	5029.0252	SS
	53.06		pad	42	5221.5075	5024.0035	SS
	50.00		1sethub	50	5384.6471	5035.5204	
	50.00		1asetspk	51	5006.8886	4949.4492	TRA
	61.33		2setpk	52	5502.8521	5209.4320	TRA
	50.50		3setpk	53	5279.6092	5153.6356	TRA
	51.42		4sethub	54	5216.3200	5054.2872	SS
	49.05		1bsetspk	55	5635.6832	5100.3817	SS
	38.25		corpost*	56	4998.4606	4998.9164	SS
	39.11		topculv	57	4982.5254	4987.2121	SS
	51.63		fnddhsb	58	5663.9780	5070.9870	SS
			corbldg	59	5672.5829	5067.4018	SS
	51.00		corbldg	60	5737.4252	5082.9769	SS
	50.10		corabut	61	5638.7286	5087.1270	SS
	50.40		corabut*	62	5631.1587	5117.7108	SS
	50.80		corabut	63	5540.5937	5095.5933	SS
	53.53		corabut	64	5551.1372	5065.6024	SS
	51.48		corbldg	65	5302.0271	5058.6258	SS
	52.07		corbld*	66	5322.7019	5054.5762	SS
	52.04		@post	67	5345.8178	5055.7652	SS
	52.06		corbld*	68	5366.8679	5065.3195	SS
	52.09		corbld*	69	5361.3597	5087.0309	SS
	52.20		lmppost	70	5425.2851	5092.0614	SS
	60.65		ipindn1'	71	5518.6197	5236.6092	SS
	62.44		ep@rock*	72	5518.2675	5188.2098	SS
	59.78		lmppst**	73	5493.7169	5176.0183	SS
	56.05		lmppst	74	5452.3223	5161.7142	SS
	52.43		lmppst	75	5395.5752	5140.4343	SS
	53.33		pole	76	5419.6243	5193.5479	SS
	53.39		corwll	77	5407.9435	5202.8009	SS
	51.45		spkpol**	78	5287.1237	5137.6420	SS
	50.53		rebar**	79	5273.7748	5127.0807	SS
	49.19		rebar***	80	5277.7354	5178.5137	SS
	51.51		lmppst	81	5316.8694	5112.8183	SS
	52.12		corbld	82	5361.3536	5087.0205	SS
				83	5647.4996	5139.9327	INT
			int	84	5656.4681	5103.0062	INT
				85	5273.9439	5126.3844	INT
				86	5656.2162	5102.9451	INT
			calcor	87	5365.2695	5071.6199	TRA
			calcor	88	5322.1713	5054.4471	TRA
			midpt	89	5344.7868	5059.9483	TRA
				90	4998.2980	4999.5877	INT
				91	5374.2424	5034.5778	INT
				92	5330.1343	5023.8934	INT
			SETIP	93	4999.9896	4999.9804	SS
			SETRRSPK	94	5528.1534	5110.9232	SS
			SETIP	95	5522.5098	5186.0988	SS
			REBAR	96	5273.8623	5126.9555	SS
			COREP	97	5317.0288	5132.2101	SS
			CBASIN	98	5404.7485	5183.7875	SS
			EP	99	5426.9015	5139.5626	SS
			EP	100	5414.0749	5119.6393	SS
			FNDIPIN	101	5409.8645	5159.3079	SS
			COREP	102	5419.6883	5091.6150	SS
			COREP	103	5389.5069	5179.4483	SS
			EP	104	5339.2034	5137.5912	SS

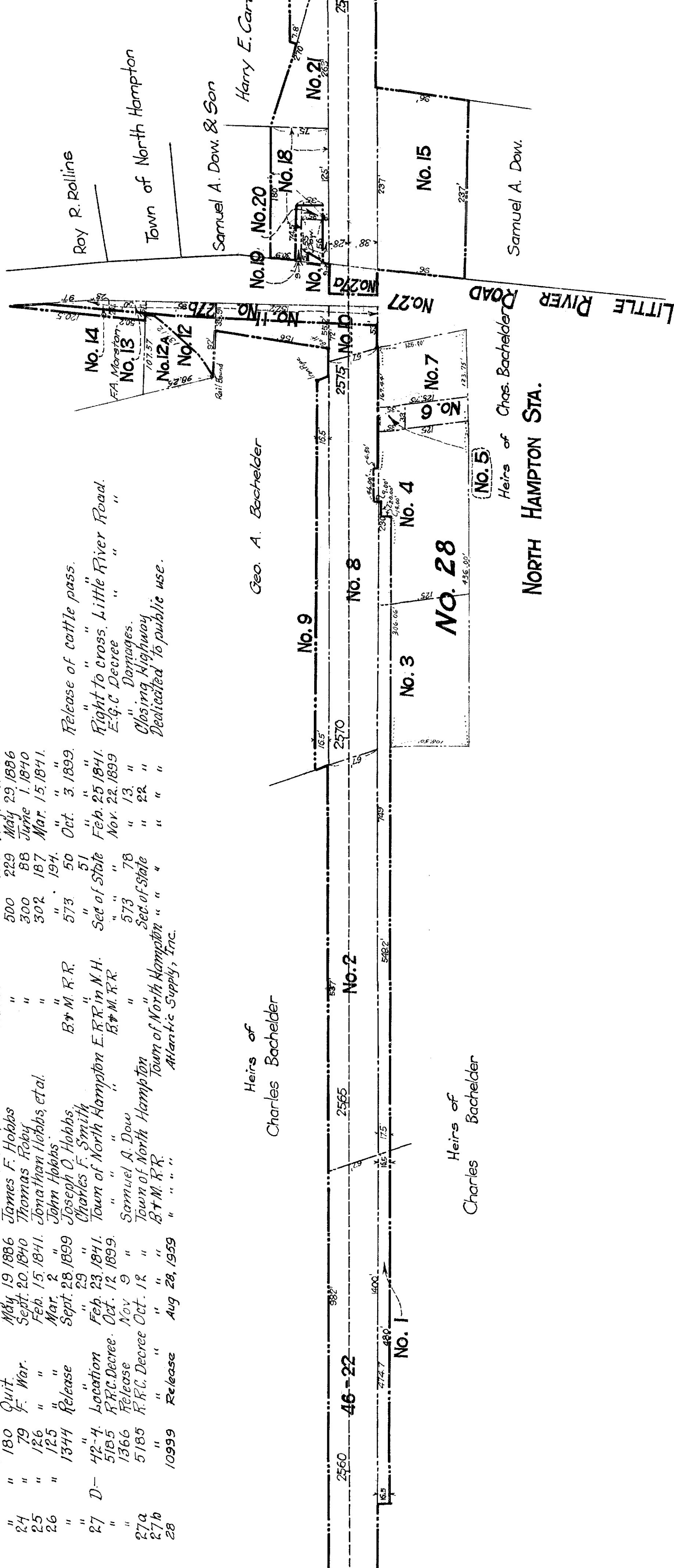
JOB #14 757DEPOT [856]

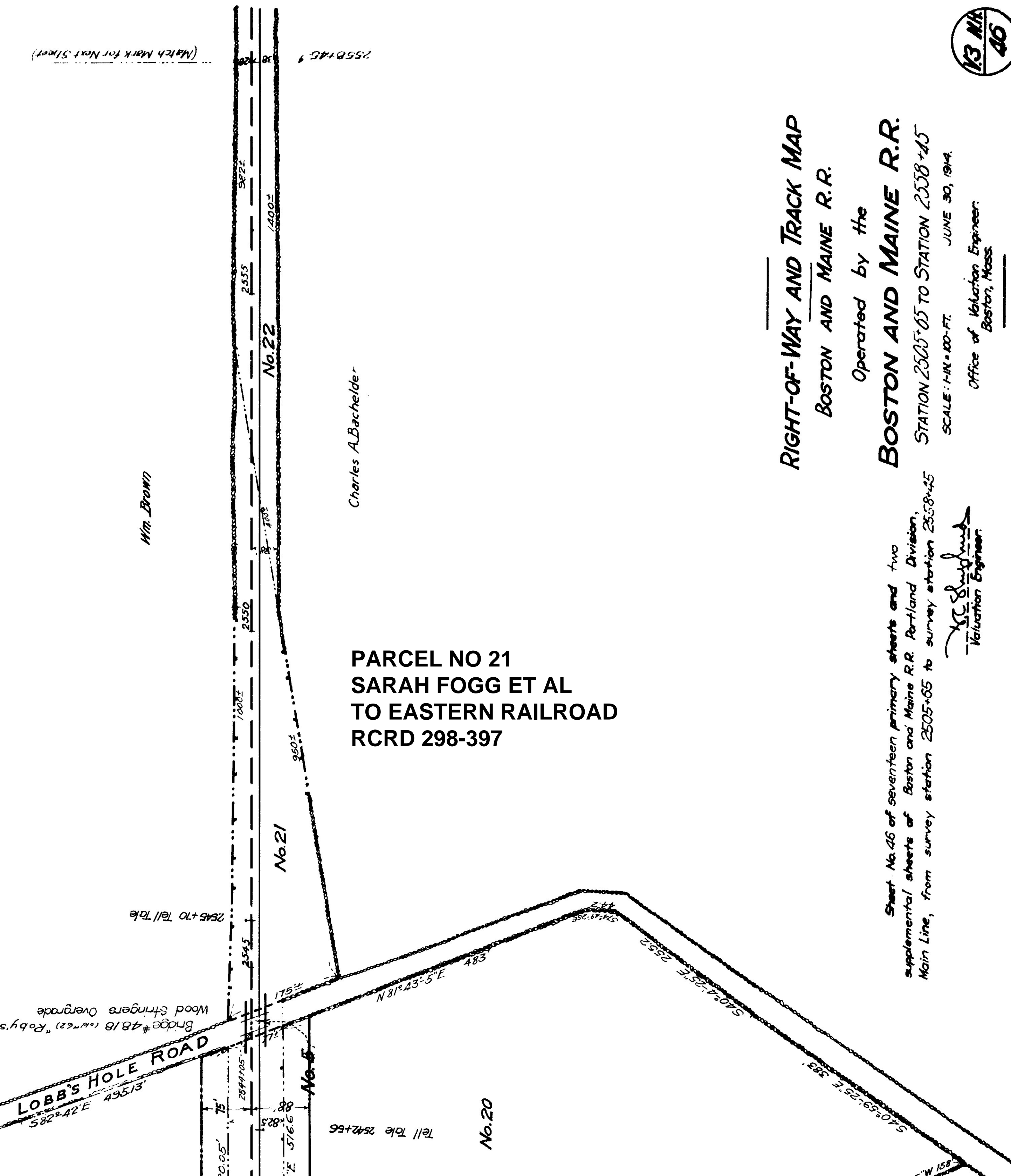
Bearing	Distance	Elev	Descrip	Pnt.	Northing	Easting	Type
-----02-11-2025-----12:15:32-----D:...\BMHOME13							
			TREE	105	5410.2285	5078.8759	SS
			TREE	106	5391.1513	5074.3392	SS
			CORDK	107	5374.9600	5060.4869	SS
			CORDRIP	108	5376.8345	5059.3946	SS
			CORDK	109	5305.7373	5043.5771	SS
			CORDRIP	110	5316.8085	5044.7233	SS
			@CORHVAC	111	5286.7882	5056.4881	SS
			PROPANE	112	5278.5760	5064.8822	SS
			HUB	113	5216.3327	5054.3106	SS
			SETIPBAS	114	5190.0337	5046.0058	SS
			RRSPKWSH	115	5200.2159	5004.2762	SS
			TOPIPTPT	116	5530.0565	5084.2583	SS
				200	5000.0000	5000.0000	
				201	5010.1233	4958.2086	TRA
				202	5340.1780	5038.1589	TRA
				203	5338.1321	5064.9308	TRA
				204	5175.3984	5025.5113	TRA
				205	5176.9287	5019.1940	TRA
				206	5132.2216	5008.3645	TRA
				207	5129.6479	5016.9886	TRA
				208	5110.2101	5012.2801	TRA
				209	5106.9141	5025.8866	TRA
				210	4999.5394	4999.8769	TRA
				211	5010.1233	4958.2086	TRA
				212	5340.1780	5038.1589	TRA
				213	5338.1321	5064.9308	TRA
				214	5175.3984	5025.5113	TRA
				215	5176.9287	5019.1940	TRA
				216	5132.2216	5008.3645	TRA
				217	5130.1028	5017.1115	TRA
				218	5110.6649	5012.4030	TRA
				219	5107.3690	5026.0095	TRA
				220	4999.9943	4999.9998	TRA
				221	5010.1233	4958.2086	TRA
				222	5340.1780	5038.1589	TRA
				223	5332.3884	5140.0917	TRA
				224	5219.7427	5113.4207	TRA
				225	4796.1434	5010.8108	TRA
				226	4809.9157	4953.9551	TRA
				227	4999.9985	4999.9995	TRA
				302	5018.9155	4914.8074	INT

Point#, Start#-End# or G#= 4-

Parcel Custodian No.	Kind of Instrument	Date of Instrument	Grantor	Grantee	Recorded in County	Book Page	Date	Remarks
46-22	E.N.H.	1. F. War.	Jan. 4, 1840, Mark Batchelder.	E.R.R. in N.H.	Rockingham County	296	379 Feb. 7, 1840	
1	"	"	Sept. 17, 1899 John A. Batchelder.	B + M.R.R.		573	48 Sept. 30, 1899	
2	E.N.H.	144	Jan. 4, 1840 Levi Batchelder.	E.R.R. in N.H.		296	380 Feb. 8, 1840	
3	"	1340	"	"		307	38 Dec. 3, 1841	
4	E.	3008	Sept. 19, 1899 Charles Batchelder.	B + M.R.R.		573	20 Sept. 19, 1899	
5	E.N.H.	155	Dec. 16, 1868 Levi Batchelder.	E.R.R. Co.		424	298 Jan. 15, 1869	
6	"	152	" 12, 1866 Thomas Roby.	E.R.R. in N.H.		413	460 " 31, 1867	
7	"	177	Mar. 17, " Robert F. Stannan.	"		412	443 June 8, 1866	
8	"	79	" 19 " John L. Hobbs.	"		444	" " "	
9	"	105	Sept. 20, 1840 Thomas Roby.	"		300	88 " 1, 1840	
10	"	56	Nov. 13, 1872 Jeremiah H. Roby.	"		441	157 Nov. 14, 1872	
11	"	1350	June 8, 1840 Abraham Leavitt.	"		298	215 July 9, 1840	
12	"	1343	Sept. 22, 1899 Joseph O. Hobbs.	B + M.R.R.		573	55 Oct. 16, 1899	Used for highway purposes.
12A	"	4032	" 29 " John F. French et ux	"		49	" 3 " "	" " "
13	"	1352	Oct. 26, 1915 B + M.R.R.	Jesse E. Billings		573	60 Oct. 21, 1899	Used for highway purposes.
14	"	1353	" 17, 1899 Edward W. Haines	B + M.R.R.		58	" " "	" " "
15	D - 42-4	"	Feb. 28, 1841 Gertrude A. Kaines	E.R.R. in N.H.		298	215 Feb. 25, 1841	
16	E.N.H.	56	June 8, 1840 John Leavitt.	"		543	284 July 9, 1840	
17	"	153	Dec. 26, 1872 Jona P. Robinson, et al	"		403	354 Sept. 8, 1894	
18	E.	1939	May 26, 1864 " " "	E.R.R. Co.		571	332 June 11, 1864	
19	"	1488	Nov. 4, 1899 B + M.R.R.	Samuel A. Dow		446	64 Nov. 11, 1899	
20	"	2026	Apr. 18, 1873 E.R.R. in N.H.	Jona P. Robinson et al		403	353 July 9, 1873	
21	E.	1360	May 26, 1864 John Leavitt	E.R.R. Co.		573	90 June 11, 1864	
22	"	1481	Nov. 27, 1899 Sarah A. Romnick	B + M.R.R.		300	198 Nov. 29, 1899	
23	E.N.H.	119	Aug. 10, 1840 Oliver Hobbs, et al	E.R.R. in N.H.		500	229 Aug. 15, 1840	
"	"	180	May 19, 1886 James F. Hobbs	"		300	88 May 29, 1886	
24	"	79	Sept. 20, 1840 Thomas Roby	"		302	187 June 1, 1840	
25	"	126	Feb. 15, 1841 Jonathan Hobbs, et al.	"		"	194 Mar. 15, 1841	
26	"	125	Mar. 2 " John Hobbs.	B + M.R.R.		573	50 Oct. 3, 1899	Release of cattle pass.
"	"	1344	Sept. 28, 1899 Joseph O. Hobbs	"		51	" " "	" " "
27	D - 42-4	"	" 29 " Charles F. Smith	E.R.R. in N.H.		573	50 Feb. 25, 1841	Right to cross Little River Road.
"	"	5185	Feb. 23, 1841 Town of North Hampton	B + M.R.R.		573	78 Nov. 22, 1899	E.G.C Decree " " "
"	"	1366	Oct. 12, 1899 " " "	"		573	78 " 13 " "	" Damages.
27a	"	5185	Nov. 9 " Samuel A. Dow	"		573	78 " 22 " "	Closing Highway
27b	"	"	Oct. 12 " Town of North Hampton	"		573	78 " " "	Dedicated to public use.
28	"	10999	" " " B + M.R.R.	"		573	78 " " "	" " "
			Aug 28, 1959 Atlantic Supply, Inc.	"		573	78 " " "	" " "

PARCEL 8
 THOMAS ROBY TO
 EASTERN RAILROAD
 RCRD 300-088





PARCEL NO 21
SARAH FOGG ET AL
TO EASTERN RAILROAD
RCRD 298-397

RIGHT-OF-WAY AND TRACK MAP
BOSTON AND MAINE R.R.

Operated by the

BOSTON AND MAINE R.R.

STATION 2505+65 TO STATION 2558+45

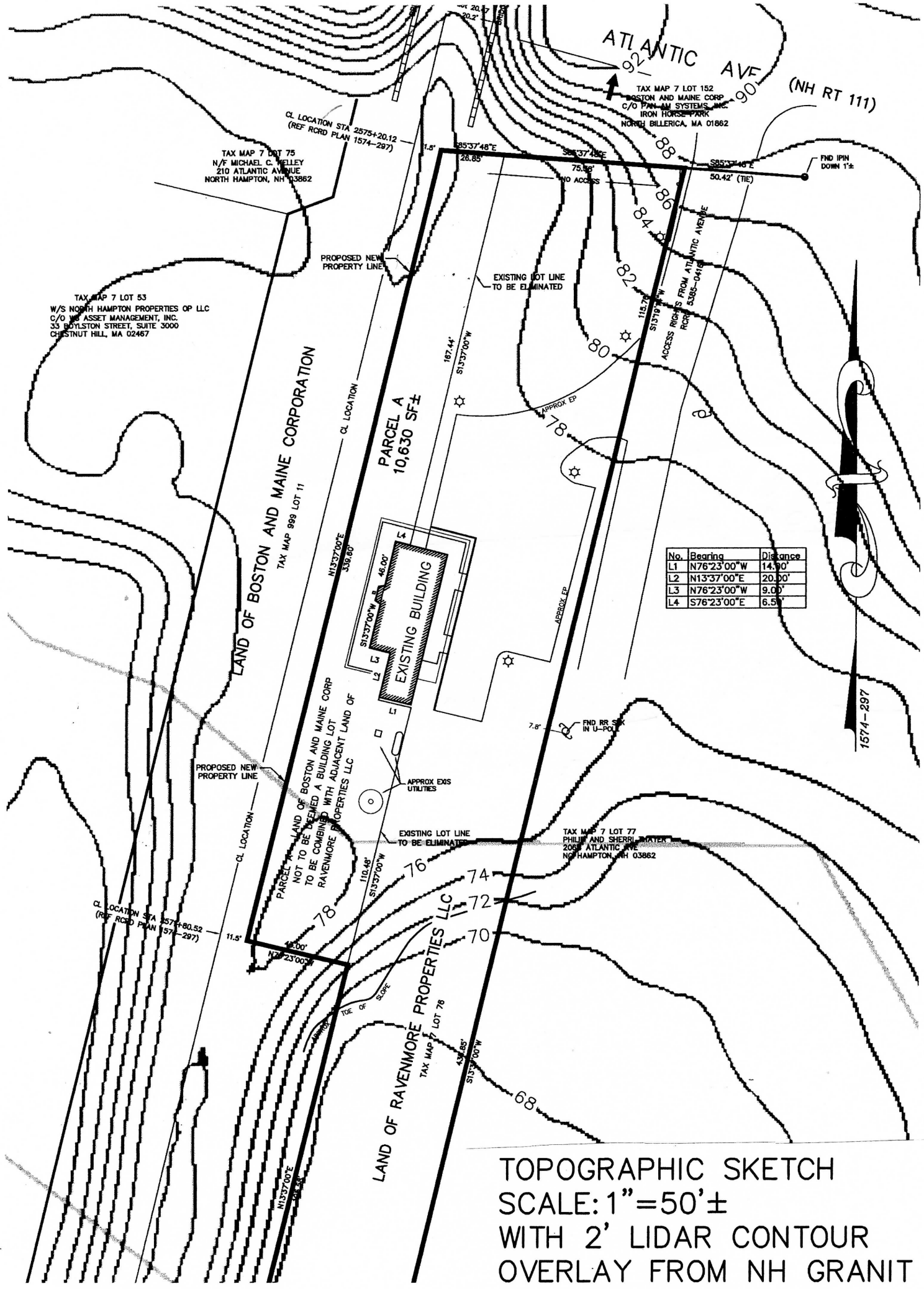
SCALE: 1"=100'-FT.

JUNE 30, 1914.

Office of Valuation Engineer:
Boston, Mass.

Sheet No. 46 of seventeen primary sheets and two
supplemental sheets of Boston and Maine R.R. Portland Division,
Main Line, from survey station 2505+65 to survey station 2558+45

W.C. Shufeldt
Valuation Engineer






PAN AM SYSTEMS

1700 IRON HORSE PARK
NO. BILLERICA, MA 01862-1681
(978) 663-6949

May 16, 2017

I, Philip D. Kingman, as an authorized representative of the Boston and Maine Corporation, owner of the railroad property corridor (Tax Map 999-011-000) located in the Town of North Hampton, NH, approve discussion of a lot line adjustment associated with the sale of a portion of Tax Map 999-011-000 property (Parcel A, approximately 10,630 square feet) to the owner of the property located at Tax Map 007-076-000 at a preliminary consultation meeting of the North Hampton Planning Board on June 6, 2017 and at any and all further planning board meetings needed to finalize the lot line adjustment.

By:


Philip D. Kingman, Senior Vice President

Acknowledgment Certificate

Commonwealth of Massachusetts

County of Middlesex

On this 16TH day of May, 2017, before me, ROBERT B. BURNS the undersigned notary public, personally appeared Philip D. Kingman, proved to me through satisfactory evidence of identification, which was personal knowledge, to be the person whose name is signed on the preceding or attached document, and acknowledged to me that he signed it voluntarily for its stated purpose as Senior Vice President for Boston and Maine Corporation.


Notary Public Signature

My Commission Expires: 8-10-23

Boston and Maine Corporation

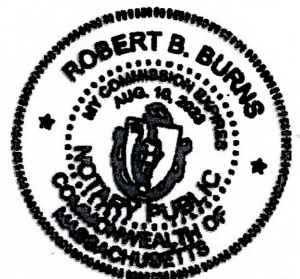
c/o Pan Am Systems, Inc.

Iron Horse Park

North Billerica, Massachusetts 01862

Attention: Michael Twidle, Assistant to the Vice President

(978) 663-6937



**HOEFLE
PHOENIX
GORMLEY &
ROBERTS, P.A.**

ATTORNEYS AT LAW

127 Parrott Avenue, Post Office Box 4480
Portsmouth, New Hampshire, 03802-4480

Telephone: (603) 436-0666
Facsimile: (603) 431-0879

October 4, 2017

Anne W. Bialobrzeski
Stockton Services
PO Box 1306
Hampton, NH 03843-1306

Re: North Hampton Depot

Dear Ms. Bialobrzeski:

As you know, this office represents Ravenmore Properties, LLC. You have inquired about the procedure used for Ravenmore to purchase a portion of an abutting parcel from Pan Am Systems.

While I am not privy to communications between Pan Am and the State of New Hampshire, I can advise that, pursuant to NH RSA 228:60-b, Ravenmore Properties' submitted a Purchase and Sale Agreement for the subject property and was forwarded to the State of New Hampshire. The State had 90 days to consider the matter. Pan Am notified the State a week before the 90-day deadline expired that it desired to exercise its statutory right of first refusal to purchase the parcel on the identical terms proposed by Ravenmore Properties. (See attached letter dated June 6, 2017 from NH DOT Commissioner Victoria Sheehan to Pan Am Vice President Philip Kingman). As indicated by Commissioner Sheehan's letter, the State sought to purchase the lot as negotiations for purchase of the entire rail corridor were underway. Subsequently, NH DOT terminated negotiations for the State's purchase of the entire corridor and released the State's right of first refusal. (See attached letter dated September 14, 2017 from Sheehan to Kingman).

Based on a review of the communications above, it appears that the process identified in NH RSA 228:60-b was followed and the State simply declined to purchase the parcel. Feel free to contact me if you have any further questions.

Sincerely,



Monica F. Kieser, Esq.

Enclosures

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Of Counsel:
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sreid@hpgrlaw.com
also admitted in Maine



Victoria F. Sheehan
Commissioner

THE STATE OF NEW HAMPSHIRE
DEPARTMENT OF TRANSPORTATION



William Cass, P.E.
Assistant Commissioner

June 6, 2017

Mr. Philip D. Kingman, Sr. Vice President
Pan Am Systems
Real Estate & Development
1700 Iron Horse Park
North Billerica, MA 01862-1681

Re: Sale of Railroad Land in North Hampton, NH (Depot area)

Dear Mr. Kingman:

In response to your certified letter (dated March 6, 2017, but received by the Department on March 13, 2017), please accept this letter as written notice, pursuant to RSA 228:60-b, that the Department of Transportation hereby accepts the offer to purchase the property referenced on the Plan of The Premises included in the draft Purchase and Sale Agreement attached to the March 2017 letter for the price of \$37,250. Of course, pursuant to state law, this acceptance is conditioned on and subject to approval by the Governor and Council within ninety (90) days of the date on this notice.

Prior to submission to the Governor and Executive Council, the State requires a copy of the signed Purchase and Sales Agreement from the proposed buyer so that we can demonstrate to the Governor & Executive Council that the original buyer is not being offered property on terms and conditions more favorable than offered to the state (RSA 228:60-b, I) and to ensure that the State is matching a "verifiable bona fide offer." (RSA 228:60-b, II).

The Department does feel that in order to make a good faith effort to preserve the corridor for interim trail use and future restoration of rail service, we must purchase this parcel as negotiations continue for acquisition of the entire remaining corridor. However, the Department would be open to a modified disposition of Parcel A, which would only include the abutter's building and sewer encroachments; this would allow the balance of Parcel A to provide sufficient corridor width, when combined with the remaining corridor, for interim trail use and future rail restoration.

If the aforementioned disposition of a smaller parcel is a palatable option, please contact the Bureau of Rail & Transit and they will await a modified letter detailing the proposed sale. If this modified disposition is not palatable, then we will await the submission of a copy of the signed Purchase and Sales Agreement.

Please let me know if you have any questions or need any further information.

Sincerely,

A handwritten signature in blue ink, appearing to read "Victoria F. Sheehan".

Victoria F. Sheehan
Commissioner

cc: Christopher Waszczuk (Commissioner's Office)
Patrick Herlihy (Commissioner's Office)
Shelley Winters (Bureau of Rail & Transit)



Victoria F. Sheehan
Commissioner

THE STATE OF NEW HAMPSHIRE
DEPARTMENT OF TRANSPORTATION
RECEIVED

SEP 18 2017



William Cass, P.E.
Assistant Commissioner

SENT VIA CERTIFIED MAIL-RETURN RECEIPT REQUESTED

September 14, 2017

Mr. Philip D. Kingman, Sr. Vice President
Pan Am Systems
Real Estate & Development
1700 Iron Horse Park
North Billerica, MA 01862-1681

Re: Sale of Railroad Land in North Hampton, NH (Depot area)

Dear Mr. Kingman:

The New Hampshire Department of Transportation has decided not to pursue the purchase of certain railroad land in North Hampton as offered by Pan Am in March of this year. As stated in our letter of June 6, 2016, the Department felt that in order to make a good faith effort to preserve the corridor for interim trail use and future restoration of rail service, the purchase of this parcel should be pursued as negotiations continued for acquisition of the entire remaining corridor.

Since that time, negotiations have not advanced for the corridor and in fact were recently terminated by the Department as a result of Pan Am's non-response in the requested timeframe to our best and final offer dated August 11, 2017. As a result it has been determined that the North Hampton parcel is no longer needed and therefore we release the State's right of first refusal in accordance with RSA 228:60-b.

The Department is very disappointed that an amicable agreement could not be reached for the corridor but does look forward to working with Pan Am in the future.

Please let me know if you have any questions or need any further information.

Sincerely,

Victoria F. Sheehan
Commissioner

cc: David Fink (Pan Am)
Rob Culliford (Pan Am)
Christopher Waszczuk (Commissioner's Office)
Patrick Herlihy (Commissioner's Office)
Shelley Winters (Bureau of Rail & Transit)



ENGINEERS
SURVEYORS
DESIGNERS

JOHN W. DURGIN ASSOCIATES, INC.

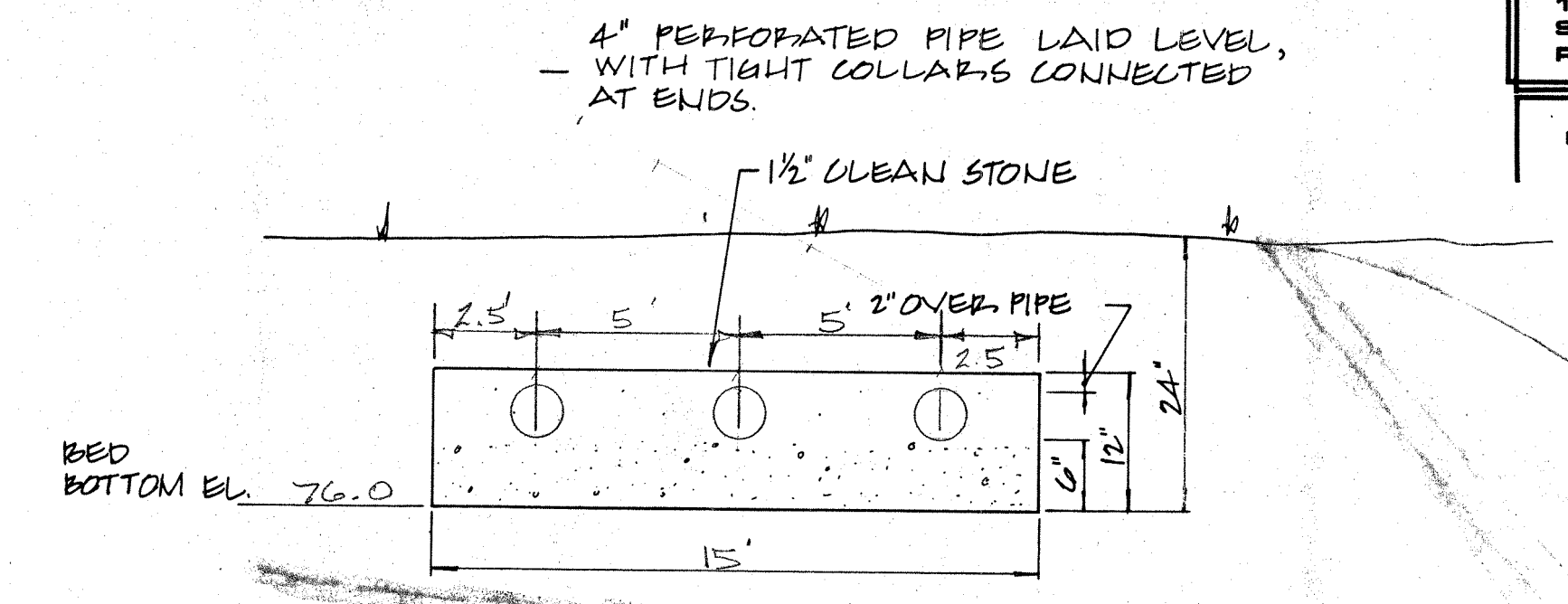
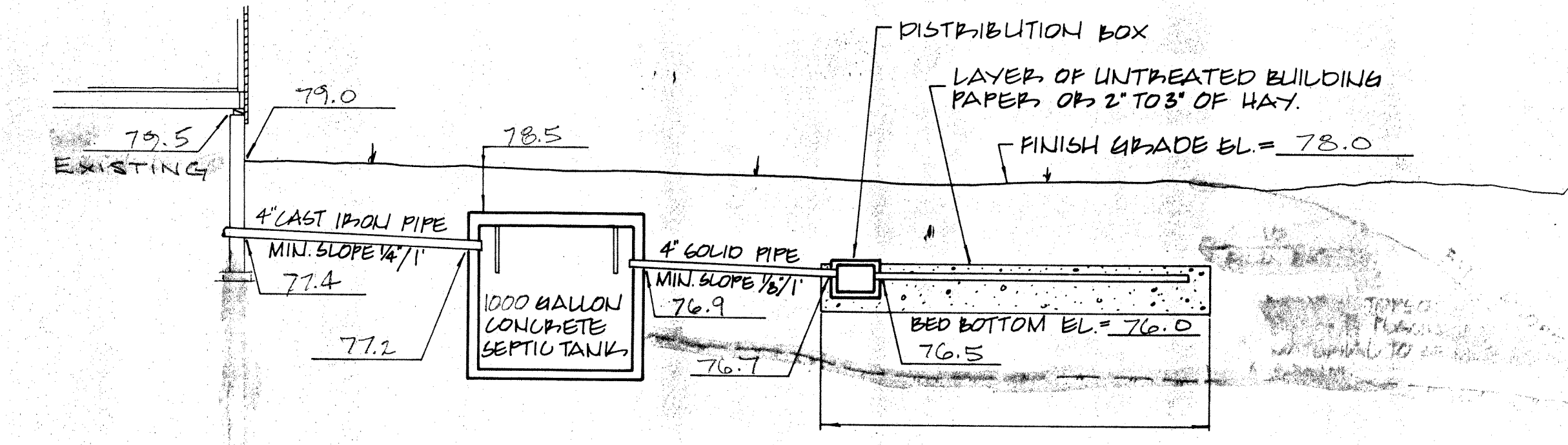
ESTABLISHED 1919

600 GREENLAND ROAD
PORTSMOUTH, N.H. 03801
1 WAKEFIELD STREET
SUITE 204
ROCHESTER, N.H. 03867

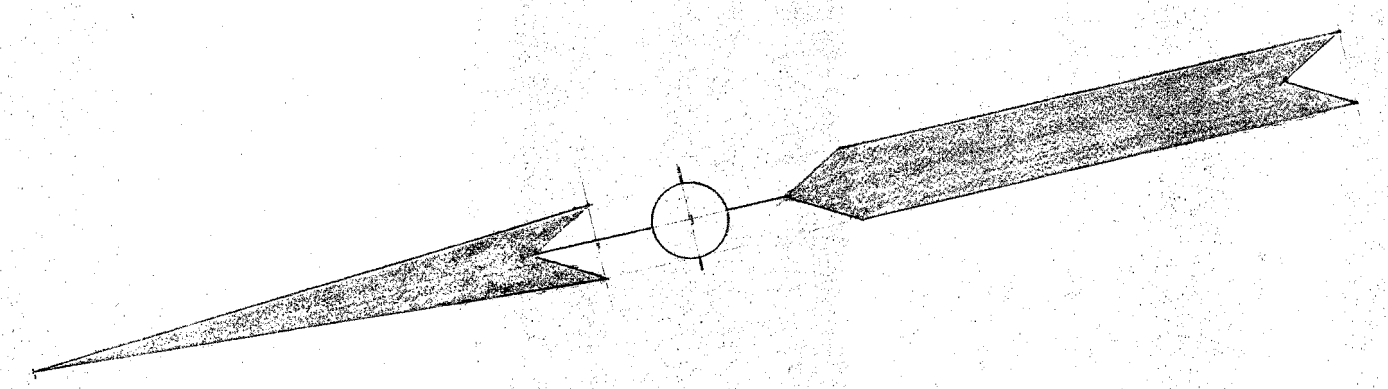
REVISIONS-

RECOMMENDED MINIMUM DISTANCES

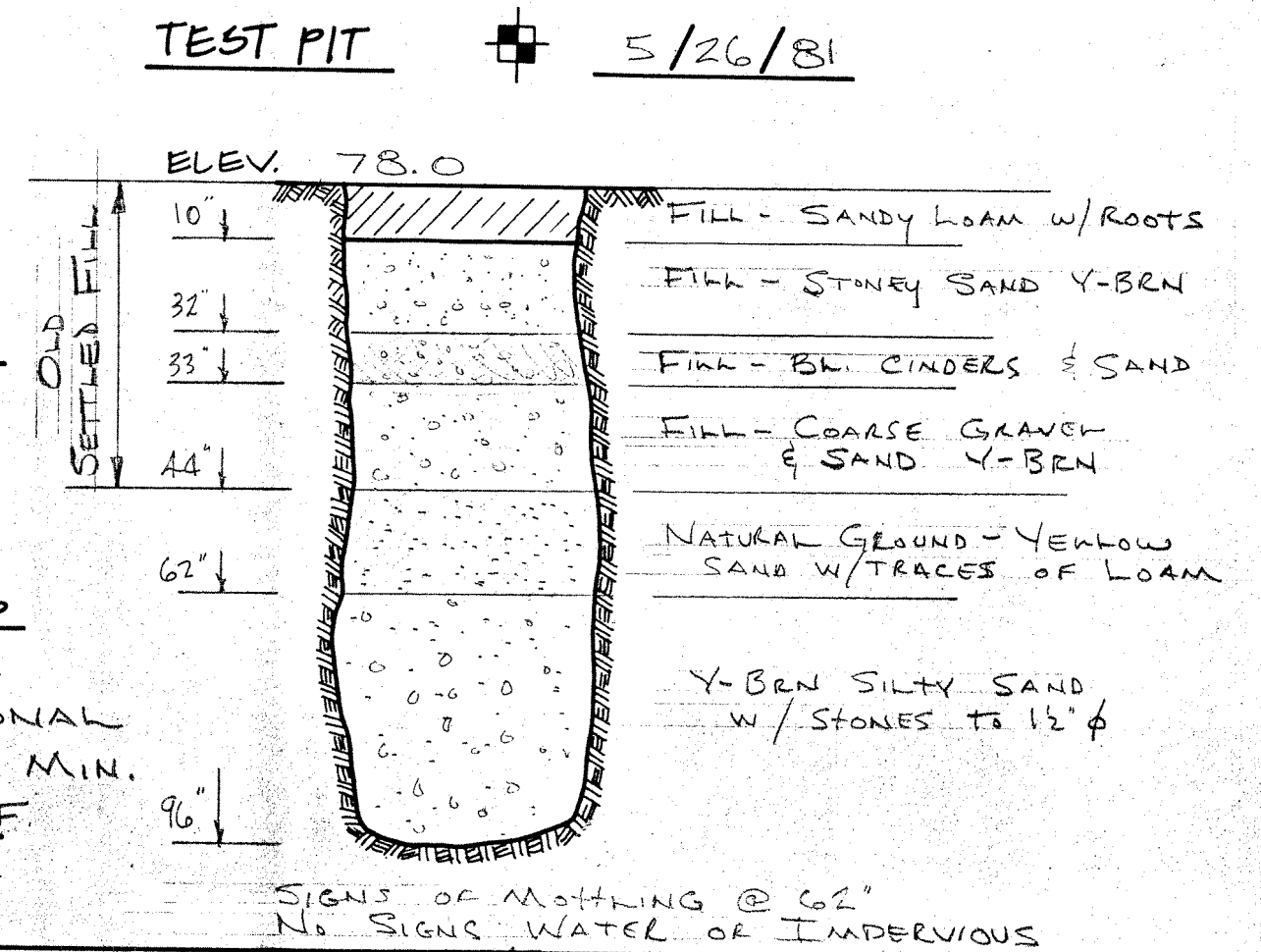
FROM	TO:	SEPTIC TANK	LEACH BED
SURFACE WATER		75'	75'
CULVERT		50'	75'
WELLS (PRIVATE)		75'	75'
FOUNDATION		5'	10'
FOUNDATION WITH DRAIN		25'	35'



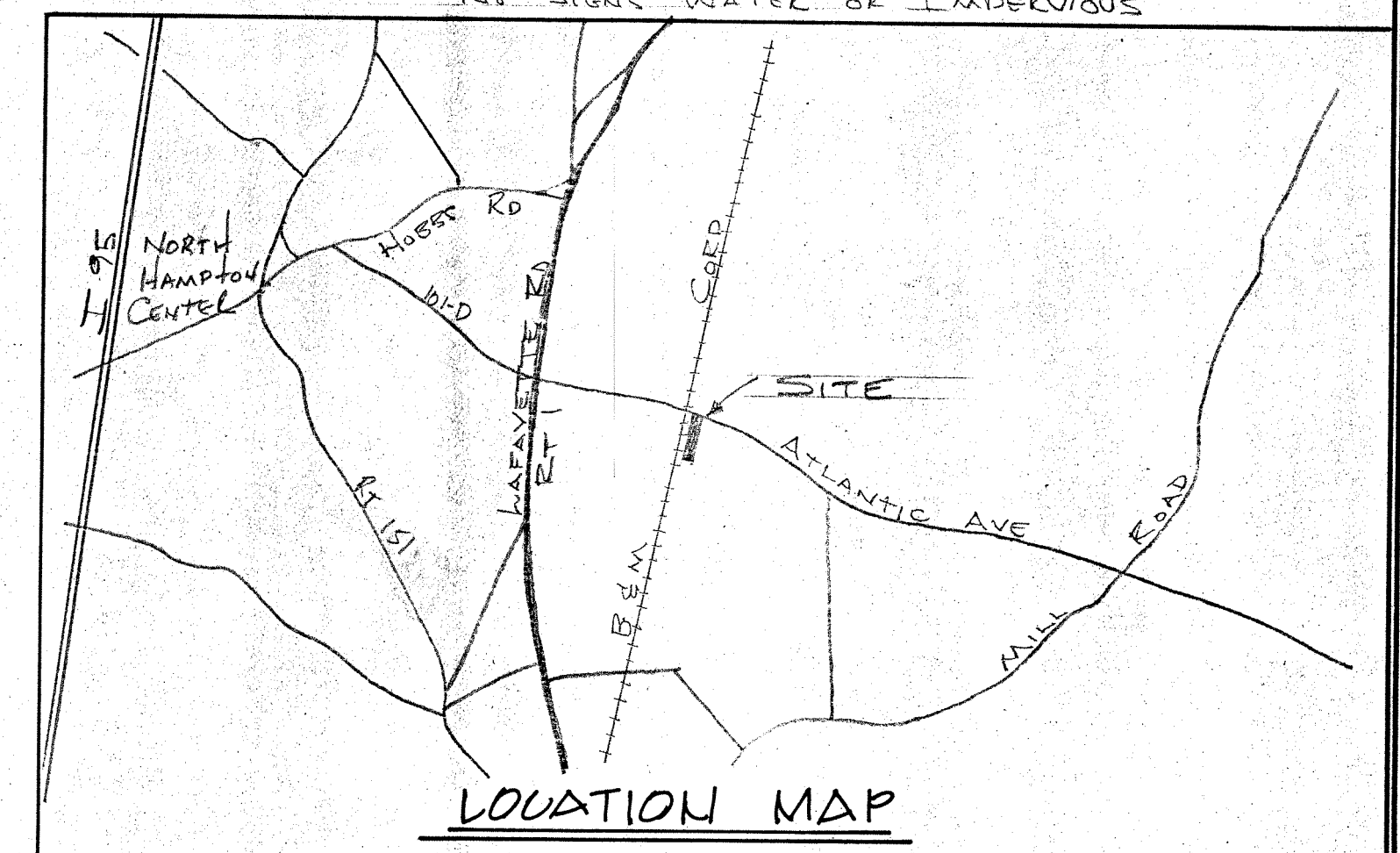
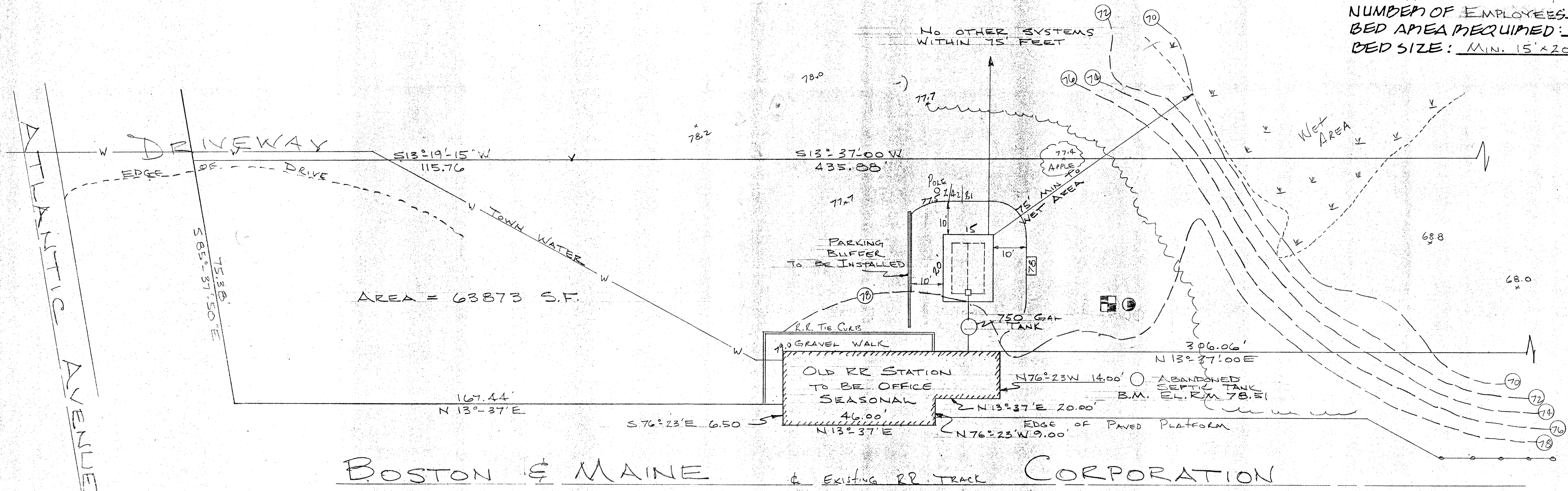
CROSS SECTION OF DISPOSAL SYSTEM
NOT TO SCALE



SOIL TYPE
Wd COUNTY
SOILS BOOK PG. 35
PERCOLATION TEST DATA
DATE CONDUCTED: 5/26/81
RESULTS: 2 MIN/INCH
DEPTH: 24 INCHES



LEACH BED REQUIREMENTS
PERU RATE: 2 MIN/INCH
NUMBER OF EMPLOYEES: 2 SEASONAL
BED AREA REQUIRED: 300 S.F. MIN.
BED SIZE: MIN. 15' X 20' = 300 S.F.



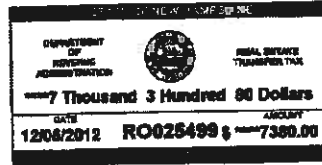
FROM THE FILES OF
AUG 19 2016
JOHN W. DURGIN

SKETCH OF LAND
SHOWING PROPOSED SEPTIC SYSTEM LAYOUT
NORTH HAMPTON, N.H.

FOR AMERICAN SOCIETY FOR
ENVIRONMENTAL EDUCATION
DR. WILLIAM L. MAYO
SCALE: 1 INCH = 20 FEET
JUNE 2, 1981

DESIGNED BY - Michael C. Gorman D-133
REVIEWED BY - R. O. Aubrey D-129
NHWSPC Approval #93661, 6/18/1981

BK 5385 PG 0415



WARRANTY DEED

Mary C. Carella, Trustee of MCC Realty Trust of 293 Atlantic Avenue, North Hampton, NH 03862 for consideration paid, grants to Ravenmore Properties, LLC, a New Hampshire limited liability company of 861 Lafayette Road, Unit 2A, Hampton, New Hampshire 03842, with

Warranty Covenants:

A certain tract or parcel of land with the buildings and improvements thereon, situated in North Hampton, Rockingham County, New Hampshire, bounded and described as follows:

Beginning at land of the Boston & Maine railroad and land now or formerly of the heirs of Earle B. Breeding (formerly land of Exeter Ass'n., Inc.) at a point 54.50 feet South 76° 23' 00" East from Station #2569 + 84.94 on the center line of the location of the New Hampshire-Portland Divisions main line route of said railroad; thence running

North 13° 37' 00" East, 306.06 feet; thence turning and running

North 76° 23' 00" West, 14.0 feet; thence turning and running

North 13° 37' 00" East, 20.0 feet; thence turning and running

North 76° 23' 00" West, 9.0 feet; thence turning and running

North 13° 37' 00" East, 46.0 feet; thence turning and running

South 76° 23' 00" East, 6.50 feet; thence turning and running

North 13° 37' 00" East, 167.44 feet to Little River Road, the last seven courses being by remaining land of said railroad; thence turning and running

South 85° 37' 48" East, (said course through Scrivener's error, being erroneously shown as S 85° 34' 48" E on prior instrument) by said Little River Road, now known as Atlantic Avenue, 75.38 feet to land now or formerly of the heirs of Earle B. Breeding; thence turning and running

South 13° 19' 14" West, along said other land now or formerly of the heirs of Earle B. Breeding, a distance of 115.76 feet; thence turning and running still along other land now or formerly of the heirs of Earle B. Breeding

South 13° 37' 00" West, a distance of 435.88 feet to a point at other land now or formerly of the heirs of Earle B. Breeding thence turning and running

062649

2012 DEC -5 PM 12:57

ROCKINGHAM COUNTY
REGISTRY OF DEEDS

BK 5385 P6 0416

North $76^{\circ} 23' 00''$ West, still by other land now or formerly of the heirs of Earle B. Breeding a distance of 58.50 feet to the point of beginning.

Being all of said measurements more or less. Said parcel containing approximately 36,090.00 square feet.

Said property subject to the restrictions set forth in the deed from Boston & Maine Railroad to Atlantic Supply, Inc. dated August 28, 1959 and recorded with the Rockingham County Registry of Deeds at Book 1574, Page 291.

Also conveying to the Grantee, its successors and assigns, the right to pass over for the usual purposes of ingress and egress, the existing driveway which has its beginning at Atlantic Avenue and runs along the easterly sideline of the above described premises in order to give Grantee complete access to its property along easterly sideline of said property.

Said property is conveyed subject to the restrictions set forth in the deed from American Society for Environmental Education, Inc. to Peter Simmons dated May 24, 1982, and recorded with the Registry of Deeds at Book 2414, Page 1748.

For title, reference is made to the Warranty Deed from Industrial Investment Corp. - NH to Mary Carella, Trustee of MCC Realty Trust - NH dated June 29, 1994, recorded with Rockingham Country Registry of Deeds at Book 3059, Page 2601.

Said property is not homestead property of the Grantor.

Signed this 5 day of November, 2012, by Mary Carella, the duly authorized Trustee of MCC Realty Trust - NH.

MCC REALTY TRUST -NH

By: 

Name: Mary C. Carella
Trustee, MCC Realty Trust

STATE OF NEW HAMPSHIRE
COUNTY OF ROCKINGHAM

The foregoing instrument was sworn and subscribed to before me on the 5 day of ~~November~~ *December*, 2012, by Mary C. Carella, Trustee of MCC Realty Trust – NH, known to me (or satisfactorily proven) to be the person whose name is subscribed to within instrument and acknowledged that he/she executed the same for the purpose therein contained.

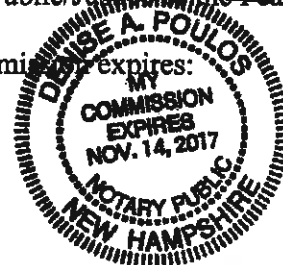
IN WITNESS WHEREOF, I have hereunto set my hand.

Dea A. Poulos

Notary Public/Justice of the Peace

My commission expires:

(Seal)



3059 P2601

ROCKINGHAM COUNTY
REGISTRY OF DEEDS

WARRANTY DEED

INDUSTRIAL INVESTMENT CORP - NH., a business incorporated under the laws of the State of New Hampshire, with a principal place of business at One Indian Head Plaza, Nashua, New Hampshire, 03060, for consideration paid, grants to Mary Carella, Trustee of MCC REALTY TRUST of 293 ATLANTIC AVENUE, NORTH HAMPTON, NH 03862, with

WARRANTY COVENANTS:

A certain tract or parcel of land with the buildings and improvements thereon, situate in North Hampton, Rockingham County, New Hampshire, bounded and described as follows:

Beginning at land of the Boston & Maine Railroad and land now or formerly of the heirs of Earle B. Breeding (formerly land of Exeter Ass'n . Inc.) at a point 54.50 feet South $76^{\circ} 23' 00''$ East from Station #2569 + 84.94 on the center line of the location of the New Hampshire-Portland Divisions Main Line route of said Railroad; thence running

North $13^{\circ} 37' 00''$ East, 306.06 feet; thence turning and running

North $76^{\circ} 23' 00''$ West, 14.0 feet; thence turning and running

North $13^{\circ} 37' 00''$ East, 20.0 feet; thence turning and running

North $76^{\circ} 23' 00''$ West, 9.0 feet; thence turning and running

North $13^{\circ} 37' 00''$ East, 46.0 feet; thence turning and running

South $76^{\circ} 23' 00''$ East, 6.50 feet; thence turning and running

North $13^{\circ} 37' 00''$ East, 167.44 feet to Little River Road, the last seven courses being by remaining land of said Railroad; thence turning and running

South $85^{\circ} 37' 48''$ East, (said course through Scrivener's error, being erroneously shown as S $85^{\circ} 34' 48''$ E on prior instrument) by said Little River Road now known as Atlantic Avenue, 75.38 feet to land now or formerly of the heirs of Earle B. Breeding; thence turning and running

South $13^{\circ} 19' 14''$ West, along said other land now or formerly of the heirs of Earle B. Breeding, a distance of 115.76 feet; thence turning and running still along other land now or formerly of the heirs of Earle B. Breeding

South $13^{\circ} 37' 00''$ West, a distance of 435.88 feet to a point at other land now or formerly of the heirs of Earle B. Breeding thence turning and running

0035326

JUN 30 11 32 AM '94

3059 P2602

- 2 -

North 76° 23' 00" West, still by other land now or formerly of the heirs of Earle B. Breeding a distance of 58.50 feet to the point of beginning.

Being all of said measurements more or less. Said parcel containing about 36,090.00 square feet.

Said property is conveyed subject to the restrictions set forth in the deed from Boston & Maine Railroad to Atlantic Supply, Inc. dated August 28, 1959, and recorded with the Rockingham County Registry of Deeds at Book 1574, Page 291.

Also conveying to the Grantee, its successors and assigns, the right to pass over the usual purposes of ingress and egress, and existing driveway which has its beginning at Atlantic Avenue and runs along the easterly sideline of the above described premises in order to give the Grantee complete access to its property along the easterly sideline of said property.

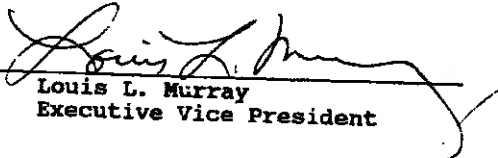
Said property is conveyed subject to the restrictions set forth in the deed from American Society for Environmental Education, Inc. to Peter Simmons dated May 24, 1982, and recorded with the Registry of Deeds at Book 2414, Page 1748.

For title, reference is made to the Warranty Deed from ~~XXX~~ to Industrial Investment Corporation - NH dated March 4, 1994, and recorded with said Registry of Deeds at Book 3041, Page 605. Joan V. Correll

Said property is not homestead property of the Grantor.

Signed this 29th day of June, 1994, by Louis L. Murray, the duly authorized Executive Vice President of Industrial Investment Corporation - NH

INDUSTRIAL INVESTMENT CORPORATION - NH

By: 
Name: Louis L. Murray
Its: Executive Vice President

PK 3059 P2603

- 2 -

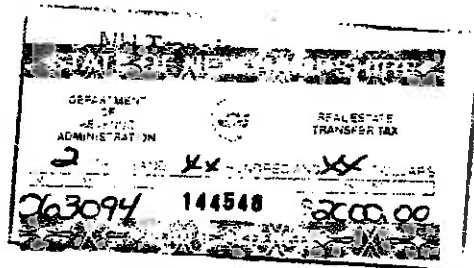
STATE OF NEW HAMPSHIRE
COUNTY OF HILLSBOROUGH

On this the 29th day of June, 1994, before me, the undersigned officer, personally appeared Louis L. Murray, the duly authorized Executive Vice President of Industrial Investment Corporation - NH., known to me (or satisfactorily proven) to be the person whose name is subscribed to the within instrument and acknowledged that he executed the same for the purpose therein contained.

IN WITNESS WHEREOF, I have hereunto set my hand.

Karla Elaine Miller
~~Justice of the Peace~~/Notary Public
My Commission Expires: _____

KARLA ELAINE MILLER, Notary Public
My Commission Expires April 1, 1997



3041 P0605

WARRANTY DEED

KNOW ALL MEN BY THESE PRESENTS, that Joan V. Correll, a married person, *Industrial Investment Corporation - NH* for consideration paid, grants to ~~Fleet Bank - NH~~, a ~~bank~~ *business* incorporated under the laws of the State of New Hampshire, with a mailing address of One Indian Head Plaza, Nashua, New Hampshire, with WARRANTY COVENANTS, the following described premises:

A certain tract or parcel of land with the buildings and improvements thereon, situate in North Hampton, Rockingham County, New Hampshire, bounded and described as follows:

Beginning at land of the Boston & Maine Railroad and land now or formerly of the heirs of Earl B. Breeding (formerly land of Exeter Ass'n. Inc.) at a point 54.50 feet South 76° 23' 00" East from Station #2569+84.94 on the center line of the location of the New Hampshire-Portland Divisions Main Line route of said Railroad; thence running

North 13° 37' 00" East, 306.06 feet; thence turning and running

North 76° 23' 00" West, 14.0 feet; thence turning and running

North 13° 37' 00" East, 20.0 feet; thence turning and running

North 76° 23' 00" West, 9.0 feet; thence turning and running

North 13° 37' 00" East, 46.0 feet; thence turning and running

South 76° 23' 00" East, 6.50 feet; thence turning and running

North 13° 37' 00" East, 167.44 feet to Little River Road, the last seven courses being by remaining land of said Railroad; thence turning and running

South 85° 37' 48" East (said course through Scrivener's error, being erroneously shown as S 85° 34' 48" E on prior instrument) by said Little River Road now known as Atlantic Avenue, 75.38 feet to land now or formerly of the heirs of Earle B. Breeding; thence turning and running

South 13° 19' 14" West, along said other land now or formerly of the heirs of Earle B. Breeding, a distance of 115.76 feet; thence turning and running still along other land now or formerly of the heirs of Earl B. Breeding

South 13° 37' 00" West, a distance of 435.88 feet to a point at other land now or formerly of the heirs of Earl B. Breeding; thence turning and running

0013526

MAR 9 3 31 PM '94

ROCKINGHAM COUNTY
CLERK OF DEEDS

2041 P0606

North 76° 23' 00" West, still by other land now or formerly of the heirs of Earle B. Breeding, a distance of 58.50 feet to the point of beginning.

Being all of said measurements more or less. Said parcel containing about 36,090.00 square feet.

Said property is conveyed subject to the restrictions set forth in the deed from Boston & Maine Railroad to Atlantic Supply, Inc. dated August 28, 1959, and recorded with the Rockingham County Registry of Deeds at Book 1574, Page 291.

Also conveying to the Grantee, its successors and assigns, the right to pass over for usual purposes of ingress and egress, and existing driveway which has its beginning at Atlantic Avenue and runs along the easterly sideline of the above described premises in order to give the Grantee complete access to its property along the easterly sideline of said property.

Said property is conveyed subject to the restrictions set forth in the deed from American Society for Environmental Education, Inc. to Peter Simmons dated May 24, 1982, and recorded with said Registry of Deeds at Book 2414, Page 1748.

For title, reference is made to the Warranty Deed from E.G.G. Associates to Joan V. Correll dated December 29, 1986, and recorded with said Registry of Deeds at Book 2652, Page 1284.

Said property is not homestead property of the Grantor.

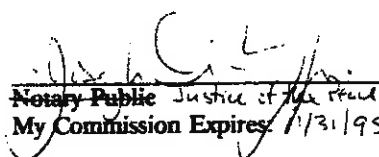
WITNESS my hand this 4th day of March, 1994.


Witness

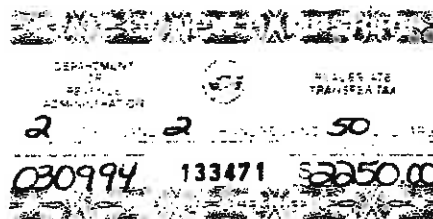

Joan V. Correll

STATE OF NEW HAMPSHIRE
COUNTY OF HILLSBOROUGH

The foregoing instrument was acknowledged before me this 4th day of March, 1994, by Joan V. Correll.


Notary Public Justice of the Peace
My Commission Expires 1/31/95

PROPERTY ADDRESS:
208 Atlantic Avenue
North Hampton, New Hampshire



BK2652 P1284

WARRANTY DEED

KNOW ALL MEN BY THESE PRESENTS that E.G.G. ASSOCIATES, a limited partnership duly organized under the laws of the State of New Hampshire, c/o Kathleen Goulet, sole General Partner of 15 Victoria Street, Manchester, County of Hillsborough and State of New Hampshire, for consideration paid, grants to JOAN V. CORRELL of 14 Elliott Street, Hampton, County of Rockingham and State of New Hampshire, with WARRANTY COVENANTS, the following described premises:

A certain tract or parcel of land with the buildings and improvements thereon, situate in North Hampton, in the County of Rockingham and State of New Hampshire, bounded and described as follows:

BEGINNING at land of the Boston & Maine Railroad and land now or formerly of the heirs of Earl B. Breeding (formerly land of Exeter Ass'n. Inc.) at a point 54.50 feet S 76°23'00" E from Station #2569+84.94 on the center line of the location of the New Hampshire-Portland Divisions Main Line route of said Railroad; thence running N 13°37'00" E 306.06 feet; thence turning and running N 76°23'00" W 14.0 feet; thence turning and running N 13°37'00" E 20.0 feet; thence turning and running N 76°23'00" W 9.0 feet; thence turning and running N 13°37'00" E 46.0 feet; thence turning and running S 76°23'00" E 6.50 feet; thence turning and running N 13°37'00" E 167.44 feet to Little River Road, the last seven courses being by remaining land of said Railroad; thence turning and running S 85°37'48" E (said course through Scrivener's error, being erroneously shown as S 85°34'48" E on prior instrument) by said Little River Road now known as Atlantic Avenue, 75.38 feet to land now or formerly of the heirs of Earle B. Breeding; thence turning and running S 13°19'14" W along said other land now or formerly of the heirs of Earle B. Breeding a distance of 115.76 feet; thence turning and running still along other land now or formerly of the heirs of Earl B. Breeding, S 13°37'00" W a distance of 435.88 feet to a point at other land now or formerly of the heirs of Earl B. Breeding; thence turning and running N 76°23'00" W, still by other land now or formerly of the heirs of Earle B. Breeding, a distance of 58.50 feet to the point of beginning, being all of said measurements more or less; said parcel containing about 36,090.00 square feet.

Said property is conveyed subject to the restrictions set forth in the deed from the Boston & Maine Railroad to Atlantic Supply, Inc. dated August 28, 1959, and recorded in Book 1574, Page 291 of the Rockingham Records.

85814

Dec 29 12 24 PM '86

Rockingham County
Registry of Deeds

135073
STATE OF NEW HAMPSHIRE
TAX ON TRANSFER
OF REAL PROPERTY
DEC 27 '86
300.00

135073
STATE OF NEW HAMPSHIRE
TAX ON TRANSFER
OF REAL PROPERTY
DEC 27 '86
300.00

BK2652 P1285

Also conveying to the Grantee, her successors and assigns, the right to pass over for the usual purpose of ingress and egress, an existing driveway which has its beginning at Atlantic Avenue and runs along the easterly sideline of the above described premises in order to give the Grantee complete access to her property along the easterly sideline of said property.

Said property is conveyed subject to the restrictions set forth in the deed from American Society for Environmental Education, Inc. to Peter Simmons dated May 24, 1982 and recorded in Rockingham Registry of Deeds in Book 2414, Page 1748.

Being the same premises conveyed to the Grantor herein by deed of E.G.G., Inc., dated December 30, 1983, and recorded in the Rockingham County Registry of Deeds at Book 2476, page 542.

IN WITNESS WHEREOF, E.G.G. ASSOCIATES has caused its name to be subscribed and sealed hereunto by its duly authorized General Partner this 29th day of December, 1986.

Witness

E.G.G. ASSOCIATES

By:

Kathleen A. Goulet-General Partner

STATE OF NEW HAMPSHIRE
COUNTY OF ROCKINGHAM

Personally appeared the above named KATHLEEN A. GOULET, who acknowledged herself to be the sole General Partner of E.G.G. ASSOCIATES and that she, as General Partner, being duly authorized, acknowledged the foregoing instrument to be the voluntary act and deed of the Limited Partnership by her represented.

Before me,

12/29/86

Justice of the Peace/Notary Public

RK2652 P1286

AFFIDAVIT

**NOW COMES KATHLEEN GOULET, of Manchester, New Hampshire,
and upon oath, deposes and says as follows:**

- 1. That by deed dated December 30, 1983, and recorded in the Rockingham County Registry of Deeds at Book 2476, Page 542, E.G.G., Inc., a New Hampshire Corporation, did convey certain land with the buildings and improvements thereon to E.G.G. Associates.**
- 2. That at that date and at all times relevant hereto, I have been the duly elected Treasurer of said Corporation.**
- 3. That said deed was executed by James U. Edwards, Jr.**
- 4. That at the time of said conveyance, the said James U. Edwards, Jr., was the President of said Corporation and duly authorized to execute said deed on behalf of the Corporation and that the Corporation was authorized to sell same.**

Dated: *12/29/86*

Kathleen Goulet
Kathleen Goulet

**State of New Hampshire
Rockingham, ss**

December 29, 1986

**Subscribed and sworn to by the above KATHLEEN GOULET, as
and for her free act and deed.**

[Signature]
Justice of the Peace
Notary Public

01377
JAN 16 11 31 AM '84
02476 P0542

WARRANTY DEED

KNOW ALL MEN BY THESE PRESENTS that E.G.G., Inc., a corporation duly organized under the laws of The State of New Hampshire, with a principal place of business in the Town of North Hampton, County of Rockingham and State of New Hampshire, for consideration paid, grants to E.G.G. Associates, a limited partnership duly organized under the laws of The State of New Hampshire, (mailing address: c/o Kathleen Goulet, 15 Victoria Street, Manchester, New Hampshire 03862), with warranty covenants, a certain tract or parcel of land with the buildings and improvements thereon, situate in North Hampton in the County of Rockingham and State of New Hampshire, bounded and described as follows, to wit:

Beginning at land of the Boston & Maine Railroad and land now or formerly of the heirs of Earl B. Breeding (formerly land of Exeter Ass'n. Inc.) at a point fifty-four and fifty hundredths (54.50) feet S 76° 23' 00" E from Station #2569+84.94 on the center line of the location of the New Hampshire-Portland Divisions Main Line route of said Railroad; thence running N 13° 37' 00" E three hundred six and six hundredths (306.06) feet; thence turning and running N 76° 23' 00" W fourteen (14.0) feet; thence turning and running N 13° 37' 00" E twenty (20.0) feet; thence turning and running N 76° 23' 00" W nine (9.0) feet; thence turning and running N 13° 37' 00" E forty-six (46.0) feet; thence turning and running S 76° 23' 00" E six and fifty hundredths (6.50) feet; thence turning and running N 13° 37' 00" E one hundred sixty-seven and forty-four hundredths (167.44) feet to Little River Road, the last seven courses being by remaining land of said Railroad; thence turning and running S 85° 34' 48" E by said Little River Road seventy-five and thirty-eight hundredths (75.38) feet to land now or formerly of the heirs of Earl B. Breeding; thence turning and running S 13° 19' 14" W along other land now or formerly of the heirs of Earl B. Breeding a distance of one hundred fifteen and seventy-six hundredths (115.76) feet; thence turning and running still along other land now or formerly of the heirs of Earl B. Breeding, S 13° 37' 00" W a distance of four hundred thirty-five and eighty-eight hundredths (435.88) feet to a point at other land now or formerly of the heirs of Earl B. Breeding; thence turning and running N 76° 23' 00" W, still by other land now or formerly of the heirs of Earl B. Breeding, a distance of fifty-eight and fifty hundredths (58.50) feet to the point of beginning, be all of said measurements more or less; said parcel containing about thirty-six thousand ninety (36,090.00) square feet.



02476 P0543

Said property is conveyed subject to the restrictions set forth in the deed from the Boston & Maine Railroad to Atlantic Supply, Inc. dated August 28, 1959, and recorded in Book 1574, Page 291 of the Rockingham Records.

Also conveying to the Grantees, their successors and assigns, the right to pass over for the usual purpose of ingress and egress, an existing driveway which has its beginning at Atlantic Avenue and runs along the easterly sideline of the above described premises in order to give the Grantees complete access to their property along the Easterly sideline of said property.

Said property is conveyed subject to the restrictions set forth in the deed from American Society for Environmental Education, Inc. to Peter Simmons dated May 24, 1982 and recorded in Rockingham Registry of Deeds in Book 2414, Page 1748.

Meaning and intending to describe and to convey all and the same premises that were conveyed to the grantor by deed of Eric W. Simmons and Thomas P. Simmons, Trustees of the Jabez Trust, dated 1983 and recorded in the Rockingham County Registry of Deeds at Book 2440, Page 808.

This conveyance is subject to a mortgage held by Bank Meridian, N.A., dated April 9, 1983, and recorded in the Rockingham County Registry of Deeds at Book 2440, Page 809 securing the indebtedness evidenced by a note given by E.G.G., Inc. to the said Bank Meridian, N.A., which indebtedness the grantee herein, by accepting this deed does assume and agree to pay to the present outstanding amount and in accordance therewith.

WITNESS my hand this 30th day of December, 1983

E.G.G., Inc.

BY: James U. Edwards, Jr.
Its
Duly authorized

STATE OF NEW HAMPSHIRE
County of Newmarket

The foregoing instrument was acknowledged before me this 30th day of December, 1983, by James U. Edwards, Jr., the President of E.G.G., Inc., a New Hampshire corporation, on behalf of the corporation.

Edward N. Damon
Justice of the Peace
Notary Public
EDWARD N. DAMON, Notary Public
My Commission Expires June 18, 1987



02440 P0808

KNOW ALL MEN BY THESE PRESENTS, That Eric W. Simmons and Thomas F. Simmons, in their capacity as Trustees of Jabez Trust, 8 Dexter Road, North Hampton, Rockingham County, New Hampshire

for consideration paid, grant to E.G.G., Inc., a New Hampshire corporation with a place of business at 15 Victoria Street, Manchester, County of Hillsborough, State of New Hampshire

with warranty covenants a certain tract or parcel of land situate in North Hampton, in said County of Rockingham and State of New Hampshire, bounded and described as follows:

Beginning at land of the Boston & Maine Railroad and land now or formerly of the heirs of Earl B. Breeding (formerly land of Exeter Ass'n. Inc.) at a point fifty-four and fifty hundredths (54.50) feet S 76° 23' 00" E from Station #2569+84.94 on the center line of the location of the New Hampshire-Portland Divisions Main Line route of said Railroad; thence running N 13° 37' 00" E three hundred six and six hundredths (306.06) feet; thence turning and running N 76° 23' 00" W fourteen (14.0) feet; thence turning and running N 13° 37' 00" E twenty (20.0) feet; thence turning and running N 76° 23' 00" W nine (9.0) feet; thence turning and running N 13° 37' 00" E forty-six (46.0) feet; thence turning and running S 76° 23' 00" E six and fifty hundredths (6.50) feet; thence turning and running N 13° 37' 00" E one hundred sixty-seven and forty-four hundredths (167.44) feet to Little River Road, the last seven courses being by remaining land of said Railroad; thence turning and running S 85° 37' 48" E by said Little River Road seventy-five and thirty-eight hundredths (75.38) feet to land now or formerly of the heirs of Earl B. Breeding; thence turning and running S 13° 19' 14" W along other land now or formerly of the heirs of Earl B. Breeding a distance of one hundred fifteen and seventy-six hundredths (115.76) feet; thence turning and running, still along other land now or formerly of the heirs of Earl B. Breeding, S 13° 37' 00" W a distance of four hundred thirty-five and eighty-eight hundredths (435.88) feet to a point at other land now or formerly of the heirs of Earl B. Breeding; thence turning and running N 76° 23' 00" West, still by other land now or formerly of the heirs of Earl B. Breeding, a distance of fifty-eight and fifty hundredths (58.50) feet to the point of beginning, be all of said measurements more or less; said parcel containing about thirty-six thousand ninety (36,090.0) square feet.

Said property is conveyed subject to the restrictions as set forth in the deed from the Boston & Maine Railroad to Atlantic Supply, Inc., dated August 28, 1959, and recorded in Book 1574, Page 291, of the Rockingham Records.

Also conveying to the Grantees, their successors and assigns, the right to pass over for the usual purpose of ingress and egress, an existing driveway which has its beginning at Atlantic Avenue and runs along the Easterly sideline of the above-described premises in order to give the Grantees complete access to their property along the Easterly sideline of said property. The grantor reserves the right to mount weather instruments in one corner of said premises, the location to be determined by the grantee.

Being the same premises conveyed to Eric W. Simmons and Thomas F. Simmons, Trustees by Warranty Deed of American Society for Environmental Education dated May 24, 1982, and recorded in the Rockingham County Registry of Deeds, Book 2414, Page 1748.

This is not homestead property.

STATE OF NEW HAMPSHIRE
TAX ON TRANSFER
OF REAL PROPERTY
COMMISSION
285.00
APR 11 11 44 AM '83
185901

Witness, our hands and seals this day of 1983

Witness
Kenneth J. French
Kenneth J. French

Eric W. Simmons, Trustee
Eric W. Simmons, Trustee of Jabez Trust
Thomas F. Simmons, Trustee
Thomas F. Simmons, Trustee of Jabez Trust

L.S.

State of New Hampshire

ROCKINGHAM

ss.:

A. D. 1983

Personally appeared Eric W. Simmons and Thomas F. Simmons,

known to me, or satisfactorily proven, to be the persons

whose names

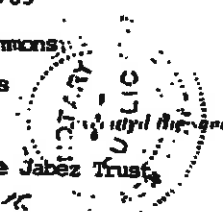
subscribed to the foregoing instrument and acknowledged that

they

for the purposes therein contained in their capacity as Trustees of the Jabez Trust.

Before me

Notary Public



BK2414 P1748

KNOW ALL MEN BY THESE PRESENTS, That AMERICAN SOCIETY FOR ENVIRONMENTAL EDUCATION, INC., a corporation organized and existing under the laws of the State of New Hampshire, with a principal place of business at Wheeler Professional Park, Hanover, Grafton County, New Hampshire,

for consideration paid, grant to ERIC W. SIMMONS and THOMAS F. SIMMONS, in their capacity as Trustees of Jabaz Trust, 8 Exeter Road, North Hampton, Rockingham County, New Hampshire,

with warranty covenants a certain tract or parcel of land situate in North Hampton, in said County of Rockingham and State of New Hampshire, bounded and described as follows:

Beginning at land of the Boston & Maine Railroad and land now or formerly of the heirs of Earl B. Breeding (formerly land of Exeter Ass'n. Inc.) at a point fifty-four and fifty hundredths (54.50) feet S 76° 23' 00" E from Station #2569+84.94 on the center line of the location of the New Hampshire-Portland Divisions Main Line route of said Railroad; thence running N 13° 37' 00" E three hundred six and six hundredths (306.06) feet; thence turning and running N 76° 23' 00" W fourteen (14.0) feet; thence turning and running N 13° 37' 00" E twenty (20.0) feet; thence turning and running N 76° 23' 00" W nine (9.0) feet; thence turning and running N 13° 37' 00" E forty-six (46.0) feet; thence turning and running S 76° 23' 00" E six and fifty hundredths (6.50) feet; thence turning and running N 13° 37' 00" E one hundred sixty-seven and forty-four hundredths (167.44) feet to Little River Road, the last seven courses being by remaining land of said Railroad; thence turning and running S 85° 37' 48" E by said Little River Road seventy-five and thirty-eight hundredths (75.38) feet to land now or formerly of the heirs of Earl B. Breeding; thence turning and running S 13° 19' 14" W along other land now or formerly of the heirs of Earl B. Breeding a distance of one hundred fifteen and seventy-six hundredths (115.76) feet; thence turning and running, still along other land now or formerly of the heirs of Earl B. Breeding, S 13° 37' 00" W a distance of four hundred thirty-five and eighty-eight hundredths (435.88) feet to a point at other land now or formerly of the heirs of Earl B. Breeding; thence turning and running N 76° 23' 00" West, still by other land now or formerly of the heirs of Earl B. Breeding, a distance of fifty-eight and fifty hundredths (58.50) feet to the point of beginning, be all of said measurements more or less; said parcel containing about thirty-six thousand ninety (36,090.0) square feet.

Said property is conveyed subject to the restrictions as set forth in the deed from the Boston & Maine Railroad to Atlantic Supply, Inc., dated August 28, 1959, and recorded in Book 1574, Page 291, of the Rockingham Records.

Also conveying to the Grantees, their successors and assigns, the right to pass over for the usual purpose of ingress and egress, an existing driveway which has its beginning at Atlantic Avenue and runs along the easterly sideline of the above-described premises in order to give the Grantees complete access to their property along the Easterly sideline of said property. The grantor reserves the right to mount weather instruments in one corner of said premises, the location to be determined by the grantor. Being the same premises conveyed to the Grantor by Warranty Deed of David Boles and Eugenia C. Boles dated March 19, 1981, and recorded in Rockingham County Registry of Deeds, Book 2385, Page 0972.

This is not homestead property.

~~Said grantee~~ ~~all rights of homestead and other interests therein.~~

Witness, its hand and seal this 24 day of MAY, 1982.

Witness

Mary H. Simmons

AMERICAN SOCIETY FOR ENVIRONMENTAL EDUCATION, INC.

By: *[Signature]* L.S.
Fully authorized

[Signature] L.S.

State of New Hampshire

Personally appeared *[Signature]* A.D. 1982

known to me, or satisfactorily proven, to be the person whose name is subscribed to the foregoing instrument and acknowledged that he executed the same for the purposes therein contained.

STATE OF NEW HAMPSHIRE
TAX ON TRANSFER
OF REAL PROPERTY
COMMISSION
208.50
JUN 17 1982

KNOW ALL MEN BY THESE PRESENTS, That DAVID BOIES and EUGENIA C. BOIES, husband and wife, of Woodland Road, North Hampton, Rockingham County, State of New Hampshire,

BK2385 P0972

for consideration paid, grant to AMERICAN SOCIETY FOR ENVIRONMENTAL EDUCATION, INC., a corporation organized and existing under the laws of the State of New Hampshire, with a principal place of business at 58 Main Street, Durham, Strafford County, New Hampshire

with warranty covenants a certain tract or parcel of land situate in North Hampton in said County and State, bounded and described as follows:

Beginning at land of the Boston & Maine Railroad and land now or formerly of the heirs of Earl B. Breeding (formerly land of Exeter Ass'n. Inc.) at a point fifty-four and fifty hundredths (54.50) feet South 76° 23' 00" East from Station #2569+84.94 on the center line of the location of the New Hampshire-Portland Divisions Main Line route of said Railroad; thence running North 13° 37' 00" East three hundred six and six hundredths (306.06) feet; thence turning and running North 76° 23' 00" West fourteen (14.0) feet; thence turning and running North 13° 37' 00" East twenty (20.0) feet; thence turning and running North 76° 23' 00" West nine (9.0) feet; thence turning and running North 13° 37' 00" East forty-six (46.0) feet; thence turning and running South 76° 23' 00" East six and fifty hundredths (6.50) feet; thence turning and running North 13° 37' 00" East one hundred sixty-seven and forty-four hundredths (167.44) feet to Little River Road, the last seven courses being by remaining land of said Railroad; thence turning and running South 85° 37' 48" East by said Little River Road seventy-five and thirty-eight hundredths (75.38) feet to land now or formerly of the heirs of Earl B. Breeding; thence turning and running South 13° 19' 14" West along other land now or formerly of the heirs of Earl B. Breeding a distance of one hundred fifteen and seventy-six hundredths (115.76) feet; thence turning and running, still along other land now or formerly of the heirs of Earl B. Breeding, South 13° 37' 00" West a distance of four hundred thirty-five and eighty-eight hundredths (435.88) feet to a point at other land now or formerly of the heirs of Earl B. Breeding; thence turning and running North 76° 23' 00" West, still by other land now or formerly of the heirs of Earl B. Breeding, a distance of fifty-eight and fifty hundredths (58.50) feet to the point of beginning, be all of said measurements more or less; said parcel containing about thirty-six thousand ninety (36,090.0) square feet.

Said property is conveyed subject to the restrictions as set forth in the deed from the Boston & Maine Railroad to Atlantic Supply, Inc., dated August 28, 1959 and recorded in Book 1574, Page 291 of the Rockingham Records.

Also conveying to the Grantees, their successors and assigns, the right to pass over for the usual purpose of ingress and egress, an existing driveway which has its beginning at Atlantic Avenue and runs along the easterly sideline of the above-described premises in order to give the Grantees complete access to their property along the Easterly sideline of said property.

Being the same premises conveyed to these Grantors by deed of Eugene P. Soles and Jeanne F. Soles dated May 22, 1968 and recorded in Book 1910, Page 407 of the Rockingham Records.

This is not homestead property.

~~said grantee~~ ~~all rights of homestead and other interests therein.~~ ~~husband~~ ~~wife of said grantor, release to~~

Witness, our hands and seals, this 19th day of March, 1981

Witness
[Signature]
[Signature]

[Signature]
David Boies
Eugenia C. Boies
L.S.

State of New Hampshire

Strafford, ss.: March 19 A.D. 1981

Personally appeared David Boies and Eugenia C. Boies

known to me, or satisfactorily proven, to be the persons whose names subscribed to the foregoing instrument and acknowledged that they executed the same for the purposes therein contained.

Before me, [Signature]
Justice of the Peace

STATE OF NEW HAMPSHIRE
TAX ON TRANSFER
OF REAL PROPERTY
10.00
MAR 23 1981

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1910 407

DEED OF WARRANTY

EUGENE P. SOLES AND JEANNE F. SOLES

of New Castle, Rockingham County, State of New Hampshire, for consideration paid, grant to DAVID BOIES AND EUGENIA C. BOIES husband and wife as joint tenants with rights of survivorship of Woodland Road, Rockingham County, State of New Hampshire, with WARRANTY covenants, the following:

A certain tract or parcel of land situate in North Hampton in said County and State, bounded and described as follows:

Beginning at land of the Boston & Maine Railroad and other land of the heirs of Earl B. Breeding (formerly land of Exeter Ass'n. Inc.) at a point 54.50 feet South 76° 23' 00" East from Station #2569 plus 84.94 on the center line of the location of the New Hampshire-Portland Divisions Main Line route of said Railroad; thence running North 13° 37' 00" East 306.06 feet; thence turning and running North 76° 23' 00" West 14 feet; thence turning and running North 13° 37' 00" East 20 feet; thence turning and running North 76° 23' 00" West nine feet; thence turning and running North 13° 37' 00" East 46 feet; thence turning and running South 76° 23' 00" East 6.50 feet; thence turning and running North 13° 37' 00" East 167.44 feet to Little River Road, the last seven courses being by remaining land of said Railroad; thence turning and running South 85° 37' 48" East by said Little River Road 75.38 feet to land of the heirs of Earl B. Breeding; thence turning and running South 13° 19' 14" West along other land of the heirs of Earl B. Breeding a distance of 115.76 feet; thence turning and running, still along other land of the heirs of Earl B. Breeding, South 13° 37' 00" West a distance of 435.88 feet to a point at other land of the heirs of Earl B. Breeding; thence turning and running North 76° 23' 00" West, still by other land of the heirs of Earl B. Breeding, a distance of 58.50 feet to the point of beginning, be all of said measurements more or less; said parcel containing about 36,090 square feet.

Said property is conveyed subject to the restrictions as set forth in the deed from the Boston and Maine Railroad to Atlantic Supply, Inc., dated August 28, 1959 and recorded in Book 1574, Page 291 of the Rockingham Records.

Also conveying to the Grantees, their heirs and assigns, the right to pass over for the usual purpose of ingress and egress, an existing driveway which has its beginning at Atlantic Avenue and runs along the easterly sideline of the above described premises in order to give the Grantees complete access to their property along the Easterly sideline of said property.



N.H. TAX
STAMP
\$5.50

-2-

1910 408

Being the same premises conveyed to these Grantors by deed of Charles H. Breeding, et al, dated March 22, 1968 and recorded in the Rockingham County Registry of Deed Book 1903, Page 418.

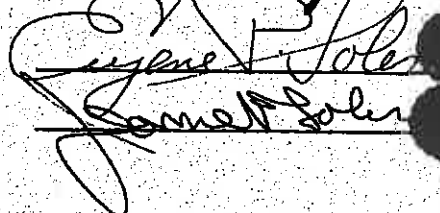
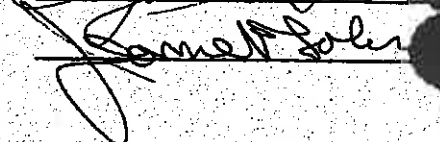
We being husband and wife, release all rights of dower, curtesy and homestead and other interests therein.

WITNESS our hands and seals this 22d day of Aug 1968

WITNESS:



(as to both)

STATE OF NEW HAMPSHIRE
ROCKINGHAM, SS.

Personally appearing the above named EUGENE P. SOLES and JEANNE F. SOLES acknowledged the foregoing instrument to be their free act and deed, before me,


Justice of the Peace
Notary Public

167
KNOW ALL MEN BY THESE PRESENTS

1574 231

that the Boston and Maine Railroad, a corporation duly established under the laws of the State of New Hampshire, in consideration of one dollar and other valuable considerations paid by the Atlantic Supply Inc. a corporation duly established under the laws of the State of New Hampshire, the receipt whereof is hereby acknowledged, does hereby give, bargain, sell and convey unto the said Atlantic Supply Inc., its successors and assigns forever, a certain parcel of land with the building thereon situated in North Hampton, County of Rockingham, State of New Hampshire, bounded and described as follows: beginning at remaining land of said Railroad and land of Exeter Ass'n. Inc. at a point fifty-four and fifty hundredths (54.50) feet South $76^{\circ} 23' 00''$ East from station 2569 plus 84.94 on the center line of the location of the New Hampshire-Portland Divisions Main Line route of said Railroad, thence running North $13^{\circ} 37' 00''$ East, three hundred and six and six hundredths (306.06) feet; thence turning and running North $76^{\circ} 23' 00''$ West, fourteen (14) feet, thence turning and running North $13^{\circ} 37' 00''$ East twenty (20) feet, thence turning and running North $76^{\circ} 23' 00''$ West, nine (9) feet; thence turning and running North $13^{\circ} 37' 00''$ East, forty-six (46) feet; thence turning and running South $76^{\circ} 23' 00''$ East, six and fifty hundredths (6.50) feet; thence turning and running North $13^{\circ} 37' 00''$ East, one hundred sixty-seven and forty-four hundredths (167.44) feet to Little River Road, the last seven (7) courses being by remaining land of said Railroad; thence turning and running South $85^{\circ} 37' 48''$ East by said Little River Road, one hundred and twenty-six (126.00) feet to other land of said Exeter Ass'n. Inc. thence turning and running South $13^{\circ} 19' 14''$ West by said last mentioned land, one hundred twenty-three and seventy-five hundredths (123.75) feet to a point; thence turning and running South $13^{\circ} 37' 00''$ West by land of Elliot Stevens and land of said Exeter Ass'n. Inc. four hundred and thirty-six (436) feet to a point; thence turning and running North $76^{\circ} 23' 00''$ West by land of said Exeter Ass'n. Inc. one hundred eight and fifty hundredths (108.50) feet to the point of beginning, be all of said measurements more or less; said parcel containing about sixty-three thousand

US Rev.
Stamps
554

1574 292

2: eight hundred and seventy-three (63,873)^{square} feet of land and being shown on a plan entitled "Land in North Hampton, N.H. Boston and Maine Railroad-to-Atlantic Supply Inc.," by J.F. Kerwin, Engineer of Design, dated August 1958, to be recorded herewith, a copy of which is hereto attached to which reference is hereby made for a further description of the premises hereby conveyed.

By the acceptance of this deed the grantee hereby covenants and agrees for itself, its successors and assigns to erect and forever maintain a suitable fence for the benefit of the remaining land of the grantor along the entire Westerly side of said parcel, if a fence is ever required by the grantor its successors and assigns at anytime hereafter. This covenant is to run with the land hereinabove described and is to be binding upon the grantee, its successors and assigns, forever.

This conveyance is made subject to the following restriction for the benefit of other land of the grantor, to wit: that neither the grantor nor its successors or assigns shall ever be liable to the said grantee, or its successors or assigns, or to any lessee of said parcel of land or of any part thereof, for any damages to any buildings or property upon the above described premises caused by fire whether communicated directly or indirectly by or from locomotive engines upon the railroad operated by the grantor or otherwise.

There is excepted from this conveyance all poles, wires and underground facilities as now located within the limits of said parcel. Said grantor hereby reserves unto itself, its successors and assigns and/or licensees the right to maintain and use said poles, wires and underground facilities and the right to enter upon said parcel from time to time and at any and all times to inspect, repair, replace, maintain, use or remove said poles, wires and underground facilities.

The said grantor hereby reserves unto itself, its successors and assigns, the right to use the existing telephone located on the premises hereby conveyed.

The said grantor hereby reserves unto itself, its successors, assigns,

1574 293

3. passengers and patrons, the right to pass and repass on and over said parcel between Little River Road and the depot building via the existing driveway.

The said Boston and Maine Railroad hereby covenants and agrees for itself, its successors and assigns, to maintain said driveway and to remove ice and snow therefrom, to the extent it deems such maintenance and removal of ice and snow necessary and further agrees to indemnify and save harmless the said Atlantic Supply Inc. its successors and assigns from and against any and all loss, cost, damage or expense and against any and all claims or suits for property damage, personal injury or death arising out of or in any way attributable to use by said grantor's passengers and patrons of said driveway and said waiting room space hereinafter designated.

TO HAVE AND TO HOLD the above described premises with all the privileges and appurtenances thereto belonging, to the said Atlantic Supply Inc., its successors and assigns, to their own use and behoof forever, but upon the express conditions, that:

1. For a period of one hundred years the said grantee, its successors and assigns shall provide and maintain for the accommodation of and use by said grantor its successors and assigns, patrons and passengers in said existing depot building, suitable passenger station facilities including a lighted and heated one hundred (100) square feet of waiting room space having dimensions of ten (10) feet by ten (10) feet and access to and from said waiting room space and the platform on remaining land of said grantor during normal business hours when passenger trains operate in and out of North Hampton.

2. That the furnishing of said passenger waiting room, heat, light and access shall be without charge to said grantor, its successors, assigns and patrons and shall be in a manner satisfactory to the principal engineering officer of the grantor, its successors or assigns, as to all reasonable requests made by such officer.

3. That there shall be no interruption in the furnishing of said passenger waiting room, heat, light and access, it being the duty of the grantee, its successors and assigns, in the event it is desired to erect

1574 234

4. such substitute building to so arrange the schedule and manner of construction of same so that there shall be no interruption in the furnishing of such passenger waiting room, heat, light and access, and no work in connection with the construction of such substitute building shall be commenced until plans thereof have been submitted by said grantee, its successors or assigns, to said principal engineering officer and his approval thereof has been given.

In the event of breach of any or all of the foregoing conditions (1), (2) and (3), then the grantor, its successors and assigns, shall have the right but not the obligation to enter upon the premises hereby conveyed and take possession of the same and upon such entry and repossession the premises shall revert to and become the property of the grantor, its successors or assigns, and the filing of a certificate in the Registry of Deeds for the County in which said premises lies and shall be conclusive evidence of such entry and repossession of the premises affected thereby. The waiver by the grantee, its successors or assigns, of any breach of any or all of the foregoing conditions shall be limited to the particular instance involved and shall not operate or be deemed to be a release of said conditions or a waiver of any future, succeeding or continuing breach of the same or in any way affect the right of re-entry for condition broken herein provided for.

IN WITNESS WHEREOF the said Boston and Maine Railroad has caused these presents to be executed and its corporate seal to be hereto affixed by G. F. Glacy, a Vice President, thereunto duly authorized, this 28th day of August, in the year one thousand nine hundred and fifty-nine.

Signed and Sealed
in presence of

J. M. [Signature]

BOSTON AND MAINE RAILROAD

By *G. F. Glacy*
Vice President

COMMONWEALTH OF MASSACHUSETTS

County of Suffolk

On this the 28th day of August, 1959, before me, *Gertrude E. Bryan*, the undersigned officer, personally appeared G. F. Glacy who acknowledged himself to be a Vice President of Boston and Maine Railroad, a corporation, and that he, as such Vice President being authorized so to do, executed the foregoing instrument for the purposes therein contained by signing



5. the name of the corporation by himself as Vice President.

1574 295

In witness whereof I hereto set my hand and official seal.

Estrode E. Cuyon
Notary Public.

My commission expires Aug. 30, 1963



C. 11, 4-58-92202

The Commonwealth of Massachusetts

EDWARD J. CHRONI
Secretary of the Commonwealth

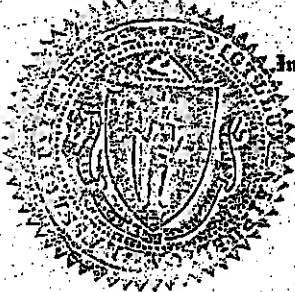
F 8753

Boston, August 31, 1959

I hereby certify, That at the date of the attestation hereto annexed,

Estrode E. Cuyon

whose name is signed to the attached certificate of acknowledgment, proof or affidavit, was at the time of taking such acknowledgment, proof or affidavit, a NOTARY PUBLIC for the said Commonwealth duly commissioned and sworn; that to her acts and attestations as such, full faith and credit are and ought to be given in and out of court; that as such Notary Public she was by law authorized to take the same, to take depositions, to administer oaths and take acknowledgments of deeds or conveyances of lands, tenements or hereditaments and other instruments throughout the Commonwealth to be recorded according to law; that I have compared her signature to the annexed attestation with the original on file in this office, and verily believe it to be genuine. I further certify that the impressions of the seals of Notaries Public are not required by law to be filed in this office.



In testimony of which, I have hereunto affixed the Great Seal of the Commonwealth the date above written.

Joseph D. Ward

EDWARD J. CHRONI
Secretary of the Commonwealth

1574 296

At a Meeting of the ~~Executive Committee~~ of the Board of Directors of BOSTON AND MAINE RAILROAD, duly called, notified and held on September 25, 1957, a quorum being present, the following action was taken:

"VOTED: ~~to enter into an agreement which has just been presented and considered, of no other sale by this Company to~~ convey to

Atlantic Supply Inc.,

or its nominee, at for a consideration of \$200.00, a parcel of land, together with the North Hampton Depot Building thereon, located in North Hampton, New Hampshire, and

containing an area of about 65,500 square feet, subject to more accurate computation and survey approved by the President or any Vice President of this Company; ~~and the President, or any Vice President of this Company, be and he hereby is authorized, on the name and behalf, to execute and deliver such agreement, and further~~

"VOTED: that the President, or any Vice President of this Company, be and he hereby is authorized in its name and behalf to execute, acknowledge, and deliver a deed of said premises when said further computation and survey have been completed and the signature of such officer on such deed shall be conclusive evidence of his approval of such computation and survey."

I, Harriet K. Maycock, Assistant Clerk of said Boston and Maine Railroad, do hereby certify that Atlantic Supply Inc.

the grantee in the deed to which this certificate is attached, is the party who has been nominated ~~to said~~

to accept such deed; and I further certify that the above mentioned computation and survey have been completed and that the premises described as conveyed by said deed are the same premises authorized to be conveyed in the vote of said

Board of Directors
~~Executive Committee~~ hereinabove set forth.

Attest:

Harriet K. Maycock
Assistant Clerk



Rec'd & recorded Jan. 27, 10:15 A.M., 1961.

N. H. TAX
STAMP
\$3.50

1903 418

DEED OF WARRANTY

We, CHARLES H. BREEDING and F. RUTH BREEDING of Portsmouth, County of Rockingham and State of New Hampshire, and ROBERT P. BREEDING and MARJORIE BREEDING of Joppa, County of Hartford, State of Maryland, for consideration paid, grant to EUGENE P. SOLES and JEANNE F. SOLES, husband and wife, as Joint Tenants with Rights of Survivorship, of Newcastle, County of Rockingham and State of New Hampshire, with WARRANTY covenants, the following described premises:

A certain tract or parcel of land situate in North Hampton in said County and State, bounded and described as follows:

Beginning at land of the Boston & Maine Railroad and other land of the Grantors (formerly land of Exeter Ass'n. Inc.) at a point 54.50 feet South 76° 23' 00" East from Station #2569 plus 84.94 on the center line of the location of the New Hampshire-Portland Divisions Main Line route of said Railroad; thence running North 13° 37' 00" East 306.06 feet; thence turning and running North 76° 23' 00" West 14 feet; thence turning and running North 13° 37' 00" East 20 feet; thence turning and running North 76° 23' 00" West nine feet; thence turning and running North 13° 37' 00" East 46 feet; thence turning and running South 76° 23' 00" East 6.50 feet; thence turning and running North 13° 37' 00" East 167.44 feet to Little River Road, the last seven courses being by remaining land of said Railroad; thence turning and running South 85° 37' 48" East by said Little River Road 75.38 feet to other land of the Grantors; thence turning and running South 13° 19' 14" West along other land of the Grantors a distance of 115.76 feet; thence turning and running, still along other land of the Grantors, South 13° 37' 00" West a distance of 435.88 feet to a point at other land of the Grantors; thence turning and running North 76° 23' 00" West, still by other land of the Grantors, a distance of 58.50 feet to the point of beginning, be all of said measurements more or less; said parcel containing about 36,090 square feet.

By the acceptance of this deed the Grantees hereby covenant and agree for themselves to abide by the restrictions as set forth in the deed from Boston & Maine Railroad to Atlantic Supply, Inc. dated August 28, 1959 and recorded in Book 1574, Page 291 of the Rockingham Records.

Also conveying to the Grantees, their heirs and assigns, the right to pass over for the usual purpose of ingress and egress, an existing driveway which has its beginning at Atlantic Avenue and runs along the easterly sideline of the above described premises in order to give the Grantees complete access to their property along the Easterly sideline of said property.

Being a portion of the premises conveyed to Earl B. Breeding by deed of Charles F. Rowell, Jr. dated September 25, 1961 and recorded in Book 1603, Page 72 of the Rockingham Records. See also Estate of Earl B. Breeding, Rockingham Probate Records #46005.

And we, Charles H. Breeding and F. Ruth Breeding, husband and wife release to the said Grantees all rights of dower, curtesy and homestead and other interest therein.

And we, Robert P. Breeding and Marjorie Breeding, husband and wife release to the said Grantees all rights of dower, curtesy and homestead and other interest therein.



- 2 -

1903 419

WITNESS our hands and seals this 22nd day of March, 1968.

<u>H. Alfred Loomis</u>	<u>Charles H. Breeding</u>
<u>H. Alfred Loomis</u>	<u>F. Ruth Breeding</u>
<u>S. Dell Fox</u>	<u>Marjorie Breeding</u>
<u>S. Dell Fox</u>	

STATE OF NEW HAMPSHIRE
ROCKINGHAM, SS.

March 22nd, 1968

Charles H. Breeding and F. Ruth Breeding personally appeared and acknowledged the foregoing instrument to be their voluntary act and deed. Before me,

H. Alfred Loomis
Justice of the Peace

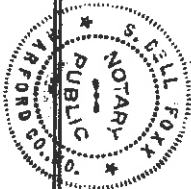
STATE OF MARYLAND
HARFORD, SS.

March 22, 1968

Robert P. Breeding and Marjorie Breeding personally appeared and acknowledged the foregoing instrument to be their voluntary act and deed. Before me,

S. Dell Fox
Notary Public

My Commission Expires: July 1 1969



State of Maryland, County of Harford, Sect.:

I, GARLAND R. GREER, Clerk of the Circuit Court for Harford County, Maryland, the same being a Court of Record of the aforesaid County, having by law a seal, do hereby certify that S. Dell Fox

by whom the foregoing ~~INSTRUMENT~~ ACKNOWLEDGMENT was taken, and whose name is subscribed thereto, was at the time of taking the same a Notary Public residing in said County, duly Commissioned and sworn and authorized by the laws of said State to take the proof or acknowledgment of deed and other instruments in writing to be recorded in said State, and to administer oaths or affirmations in said County, and that I am well acquainted with his handwriting and verily believe that the signature to the foregoing certificate is genuine.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal, which is the seal of said Court this 23rd day of March 19 68.

Garland R. Greer
Clerk of the Circuit Court for Harford County



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WARRANTY DEED

We, Charles F. Rowell, Jr. and Theresa Rowell, both of North Hampton, Rockingham County, State of New Hampshire, FOR CONSIDERATION PAID, grant to Earl B. Breeding, of North Hampton, Rockingham County, State of New Hampshire, with WARRANTY COVENANTS, the following described premises:

A certain piece or parcel of land, with the building thereon, situated in North Hampton, Rockingham County, State of New Hampshire, bounded and described as follows:

Beginning at land of the Boston & Maine Railroad and land of Exeter Ass'n. Inc. at a point fifty-four and fifty hundredths (54.50) feet South 76°23'00" East from station 2569 plus 84.94 on the center line of the location of the New Hampshire-Portland Division Main Line route of said Railroad, thence running North 13°37'00" East, three hundred and six and six hundredths (306.06) feet; thence turning and running North 76°23'00" West, fourteen (14) feet, thence turning and running North 13°37'00" East twenty (20) feet; thence turning and running North 76°23'00" West, nine (9) feet; thence turning and running North 13°37'00" East, forty-six (46) feet; thence turning and running South 76°23'00" East, six and fifty hundredths (6.50) feet; thence turning and running North 13°37'00" East, one hundred sixty-seven and forty-four hundredths (167.44) feet to Little River Road, the last seven (7) courses being by remaining land of said Railroad; thence turning and running South 85°37'48" East by said Little River Road, one hundred and twenty-six (126.00) feet to other land of said Exeter Ass'n. Inc. thence turning and running South 13°19'14" West by said last mentioned land, one hundred twenty-three and seventy-five hundredths (123.75) feet to a point; thence turning and running South 13°37'00" West by land of Elliot Stevens and land of said Exeter Ass'n. Inc. four hundred and thirty-six (436) feet to a point; thence turning and running North 76°23'00" West by land of said Exeter Ass'n. Inc. one hundred eight and fifty hundredths (108.50) feet to the point of beginning, be all of said measurements more or less; said parcel containing about sixty-three thousand eight hundred and seventy-three (63,873) square feet of land and being shown on a plan entitled "Land in North Hampton, N.H. Boston and Maine Railroad-to-Atlantic Supply Inc.," by J. F. Kerwin Engineer of Design, dated August 1958, and recorded in Rockingham Records, Book 1574, Page 297, to which reference is hereby made for a further description of the premises hereby conveyed.

By the acceptance of this Deed the Grantee hereby covenants and agrees for himself, his heirs, executors, administrators and assigns to erect and forever maintain a suitable fence for the benefit of land of the Boston and Maine Railroad along the entire Westerly side of said parcel, if a fence is ever required by the said Railroad its successors and assigns at any time hereafter. This covenant is to run with the land herein above described and is to be binding upon the Grantee, his heirs, executors, administrators and assigns, forever.

This conveyance is made subject to the following restriction for the benefit of land of the Boston and Maine Railroad, to wit: Neither the Boston and Maine Railroad nor its successors or assigns shall ever be liable to the said Grantee, his heirs, executors, administrators or assigns, or to any Lessee of said parcel of land or any part thereof, for any damages to any buildings or



US Raw
Stamps
\$ 5.50

WARRANTY DEED (cont'd.) 1603 073

property upon the above described premises caused by fire whether communicated directly or indirectly by or from locomotive engines upon the railroad operated by the Boston and Maine Railroad or otherwise.

There is excepted from this conveyance all poles, wires and underground facilities as now located within the limits of said parcel. Said premises are conveyed subject to a reservation to the Boston and Maine Railroad, its successors and assigns and/or licensees the right to maintain and use said poles, wires and underground facilities and the right to enter upon said parcel from time to time and at any and all times to inspect, repair, replace, maintain, use or remove, said poles, wires and underground facilities.

Said premises are conveyed subject to a reservation to the Boston and Maine Railroad, its successors and assigns, the right to use the existing telephone located on the premises hereby conveyed.

Said premises are conveyed subject to a reservation unto the Boston and Maine Railroad, its successors and assigns, passengers and patrons, the right to pass and repass on and over said parcel between Little River Road and the depot building via the existing driveway.

Included in the herein described premises is the covenant and agreement on the part of the Boston and Maine Railroad, its successors and assigns, to maintain said driveway and to remove ice and snow therefrom, to the extent it deems such maintenance and removal of ice and snow necessary and the further covenant and agreement on the part of said Railroad to indemnify and save harmless the Atlantic Supply Inc., its successors and assigns from and against any and all loss, cost, damage or expense and against any and all claims or suits for property damage, personal injury or death arising out of or in any way attributable to use by said Railroad's passengers and patrons of said driveway and said waiting room space hereinafter designated.

Said premises are conveyed upon the express conditions, that:

1. For a period of one hundred years, from August 28, 1959, the said Grantee, his heirs, executors, and administrators and assigns shall provide and maintain for the accommodation of and use by the Boston and Maine Railroad its successors and assigns, patrons and passengers in said existing depot building, suitable passenger station facilities including a lighted and heated one hundred (100) square feet of waiting room space having dimensions of ten (10) feet by ten (10) feet and access to and from said waiting room space and the platform on land of said Railroad during normal business hours when passenger trains operate in and out of North Hampton.

2. That the furnishing of said passenger waiting room, heat, light and access shall be without charge to said Railroad, its successors, assigns and patrons and shall be in a manner satisfactory to the principal engineering officer of said Railroad, its successors or assigns, as to all reasonable requests made by such officer.

3. That there shall be no interruption in the furnishing of said passenger waiting room, heat, light and access, it being the duty of the Grantee, his heirs, executors, administrators and assigns, in the event it is desired to erect such substitute building to so arrange the schedule and manner of construction of same so that there shall be no interruption in the furnishing of such passenger waiting room, heat, light and access, and no work in connection with the construction of such substitute building

1603 074

48

1603 074

WARRANTY DEED (cont'd.)

shall be commenced until plans thereof have been submitted by the said Grantee, his heirs, executors, administrators or assigns, to said principal engineering officer and his approval thereof has been given.

Said premises are conveyed subject to the following described right of the Boston and Maine Railroad, its successors and assigns: In the event of breach of any or all of the foregoing conditions (1), (2) and (3), then the Boston and Maine Railroad, its successors and assigns, shall have the right but not the obligation to enter upon the premises hereby conveyed and take possession of the same and upon such entry and repossession the premises shall revert to and become the property of the Boston and Maine Railroad, its successors or assigns, and the filing of a certificate in the Registry of Deeds for the County in which said premises lies shall be conclusive evidence of such entry and repossession of the premises affected thereby. The waiver by the Boston and Maine Railroad, its successors or assigns, of any breach of any or all of the foregoing conditions shall be limited to the particular instance involved and shall not operate or be deemed to be a release of said conditions or a waiver of any future, succeeding or continuing breach of the same or in any way affect the right of re-entry for condition broken herein provided for.

Said premises are conveyed subject to the taxes for the year 1961 which the Grantee herein assumes and agrees to pay.

Being the same premises conveyed to the Grantors by deed of Atlantic Supply Inc., dated July 28, 1961, and to be recorded in Rockingham Records herewith. Reference is also made to deed of Boston and Maine Railroad to Atlantic Supply Inc. dated August 28, 1959 and recorded in Rockingham Records, Book 1574, Page 291, to which reference is hereby made for a further description of the reservations, easements and rights unto the Boston and Maine Railroad, herein contained, and for a further description of the covenants, agreements and conditions on the part of the Grantee, herein contained, and which by the acceptance of this deed the Grantee covenants and agrees to assume, perform and fulfill.

AND WE, being husband and wife, release all rights of dower and curtesy and homestead and other interests therein.

WITNESS our hands and seals this 25th day of September in the year 1961.

Witness:

Seth M. Jenkins FRP Charles F. Rowell Jr.
(to both) TR Theresa Rowell

STATE OF NEW HAMPSHIRE

Rockingham, ss

Sept. 25th 1961

Then personally appeared the above named Charles F. Rowell Jr. and Theresa Rowell and acknowledged the foregoing instrument to be their voluntary act and deed. Before me,

My N.P. Commission expires

Oct 31, 1965

Rec'd & recorded Oct. 13, 2:30 P.M., 1961.

Seth M. Jenkins
Notary Public
Justice of the Peace

Know All Men by these Presents,

That *I* Jeremiah H. Roby of North Hampton in the County of Rockingham and State of New Hampshire.

For and in consideration of the sum of *Fifty Dollars* to *me* in hand, before the delivery hereof, well and truly paid by

John W. F. Hobbs of said North Hampton

Roby
to
Hobbs

the receipt whereof *I* do hereby acknowledge, have given, granted, bargained and sold, and by these presents do give, grant, bargain, sell, alien, enfeoff, convey and confirm unto the said *John W. F. Hobbs* his heirs and assigns forever,

A certain tract or parcel of land situate in said North Hampton. Beginning at a stake at the Southeast corner of *John W. F. Hobbs* land on the West side of the Eastern Railroad, thence running Southerly on said Railroad line one hundred and thirty nine feet to a stake, thence Westerly nine rods to a stake, thence Northerly ten rods to a stake by the side of the fence, thence Easterly on said fence one hundred and fifteen feet to a stake thence Southerly twenty six feet to a stake, thence Easterly thirty three and a half feet to the bound first mentioned, and containing one half of an acre more or less and bounded as follows, viz: Easterly on land of said *John W. F. Hobbs* and land of Eastern Railroad, Southerly and Westerly on my own land, Northerly partly on land of *John Seavitt* and partly on land of said *John W. F. Hobbs*.

To HAVE and to HOLD the said granted premises, with all the privileges and appurtenances to the same belonging, to *him* the said *John W. F. Hobbs* and his heirs and assigns, to his heirs and assigns forever. And *I* the said *Jeremiah H. Roby* and my heirs, executors, and administrators, do hereby covenant, grant and agree to and with the said *John W. F. Hobbs* and his heirs and assigns, that until the delivery hereof *I am* the lawful owner of the said premises and *am* seized and possessed thereof in *my* own right in fee simple, and have full power and lawful authority to grant and convey the same in manner aforesaid: that the said premises are free and clear from all and every encumbrance whatsoever, and that *I* and my heirs, executors, and administrators, shall and will warrant and defend the same to the said *John W. F. Hobbs* and his heirs and assigns, against the lawful claims and demands of any person or persons whomsoever.

And *I, Hannah T. Roby* wife of the said *Jeremiah H. Roby* in consideration aforesaid, do hereby relinquish my right of dower in the before mentioned premises.

And we, and each of us, do hereby release, discharge and waive all such rights of exemption from attachment, and levy or sale on execution, and such other rights whatsoever, in said premises, and in each and every part thereof, as our family homestead, as are reserved or secured to us, or either of us, by the Statute of the State of New Hampshire, passed July 4th, 1851, entitled "An act to exempt the homestead of families from attachment and levy or sale on execution," or by any other Statute or Statutes of said State.

IN WITNESS WHEREOF, *we* have hereunto set our hand & seal & this first day of *July* in the year of our Lord, 1876,

SIGNED, SEALED, AND DELIVERED IN PRESENCE OF US:

John W. Hobbs
John S. Hobbs

Jeremiah H. Roby {L.S.}
Hannah T. Roby {L.S.}

State of New Hampshire, Rockingham, ss. *July 1st* A.D. 1876.

PERSONALLY appeared the above named *Jeremiah H. Roby* acknowledged the foregoing instrument to be his voluntary act and deed, before me.

John S. Hobbs, JUSTICE OF THE PEACE.

Received and Recorded,

July 21, 1876,

Geo. W. Weston, REGISTER.

Know all men by these presents
that I, Joseph O. Hobbs of North Hampton, Rockingham
County, New Hampshire, in consideration of Twenty five
hundred Dollars (\$2500) paid by the Boston and Maine
Railroad, a corporation duly established under the laws of the
State of New Hampshire, the receipt whereof is hereby acknowledged,
do hereby give, grant, bargain, sell and convey unto the said
Boston and Maine Railroad

Man
Hobbs
to
B & M. R.R.
Del to
F. R. Drake

A certain parcel of land shown as parcel - on a plan
entitled Boston and Maine Railroad Eastern Division, Plan of
Little River Road crossing, North Hampton, N.H. and situated
in said North Hampton and bounded and described as follows:
Beginning at an iron pin on the southerly side of the
highway called Little River Road and at the westerly side
line of location of the Eastern Division of the Boston & Maine
Railroad, thence running South $12^{\circ}42'N$. by said westerly side
line of location about fifty five and two tenths (55.2) feet to
an iron pin, thence running $N. 68^{\circ}45'W$. by land of said grantor
about one hundred fifty six (156) feet to an iron pin on the
easterly line of land, now or formerly of John F. French, thence
running $N. 15^{\circ}42'E$. by the easterly line of said land, now or
formerly of French about thirty five and nine tenths (35.9)
feet to an iron pin at said Little River Road, thence
running $S. 75^{\circ}46'E$. by said Little River Road about one
hundred fifty two and two tenths (152.2) feet to the point
of beginning. The buildings on said premises to remain the
property of said Hobbs and to be removed by said Railroad
as hereinafter set forth, containing about 7070 square feet.
And in consideration of the above sum of twenty five
hundred dollars, and the faithful performance by said
Boston & Maine Railroad of the stipulations and agreements
contained in its contract with me, dated September 22^d 1899
providing among other things, for the grading of land and
the removal thereof of the buildings from the granted
premises, I do hereby relinquish all claims or claims, for
damage against said Boston & Maine Railroad, on
account of injury to my property or business which results,
or may result, from the change of grades at Little
River Road crossing, at said North Hampton, in accordance
with the petition to and order of the Railroad Commissioners
of New Hampshire, and in accordance with a plan and map
of the same now on file in the office of the Railroad
Commissioners of the State of New Hampshire.

To have and to hold the granted premises, with all the
privileges and appurtenances thereto belonging, to the said
Boston and Maine Railroad its successors and assigns, to
their own use and behoof forever.

And I do hereby, for myself and my heirs, executors and
administrators, covenant with the said grantee and its
successors and assigns that I am lawfully seized in

See Microfilm 00195
PLAN Removed 4/1979

free simple of the granted premises, that they are free from all incumbrances, that I have good right to sell and convey the same as aforesaid, and that I will and my heirs, executors, and administrators shall warrant and defend the same to the said grantee and its successors and assigns forever against the lawful claims and demands of all persons.

And for the consideration aforesaid I, Annie F. Hobbs wife of said Joseph O. Hobbs do hereby release unto the grantee and its successors and assigns all right of dower in the granted premises.

And we and each of us do hereby release, discharge and waive all such rights of exemption from attachment and levy or sale or execution, and such other rights whatsoever in said premises, and in each and every part thereof as our Family Homestead, as are reserved, or secured to us, or either of us, by the laws of the State of New Hampshire, or by any other statute or statutes of said State.

In witness whereof we the said Joseph O. Hobbs and Annie F. Hobbs hereto set our hands and seals this twenty second day of September in the year one thousand eight hundred and ninety nine.

Signed and sealed

in presence of
Francis R. Drake
Martha E. Page

State of New Hampshire, Rockingham ss. Oct. 12, 1899.

Then personally appeared the above named Joseph O. Hobbs and Annie F. Hobbs and acknowledged the foregoing instrument to be their free act and deed, before me

Francis R. Drake
Justice of the Peace

Received and Recorded Oct. 16th 1899, at 8-25 a.m.,
William Monill - Register

Assignment
Alexander, exr.

to
Leland
Deed 550
Page 456

Dec 15
Mrs J. M. Bran
by mail

Know all men by these presents, that I, Harrison Alexander, exr. of the will of James D. Alexander, in consideration of four hundred dollars to me paid by Mary E. Leland of Derry within mentioned have transferred and assigned and by these presents do transfer and assign to her the within mortgage, the debt thereby secured together with all the right, title interest or estate of said James D. Alexander to the property within described.

Witness my hand and seal this thirteenth day of January
A. D. 1899

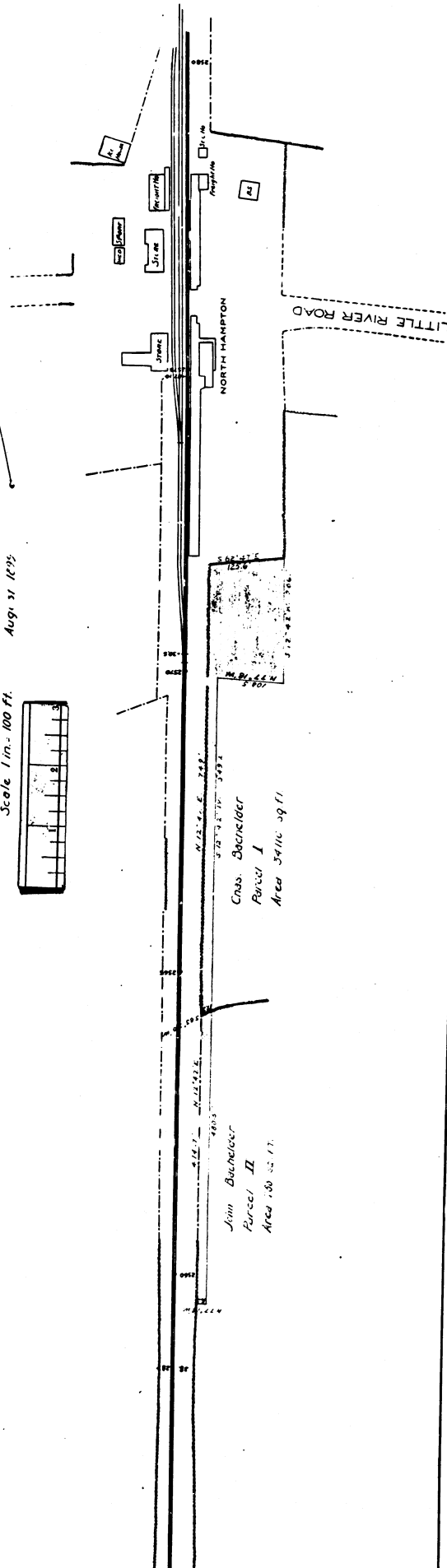
Harrison Alexander

Executor of James D. Alexander

Received and Recorded Oct. 17th 1899.
William Monill - Register

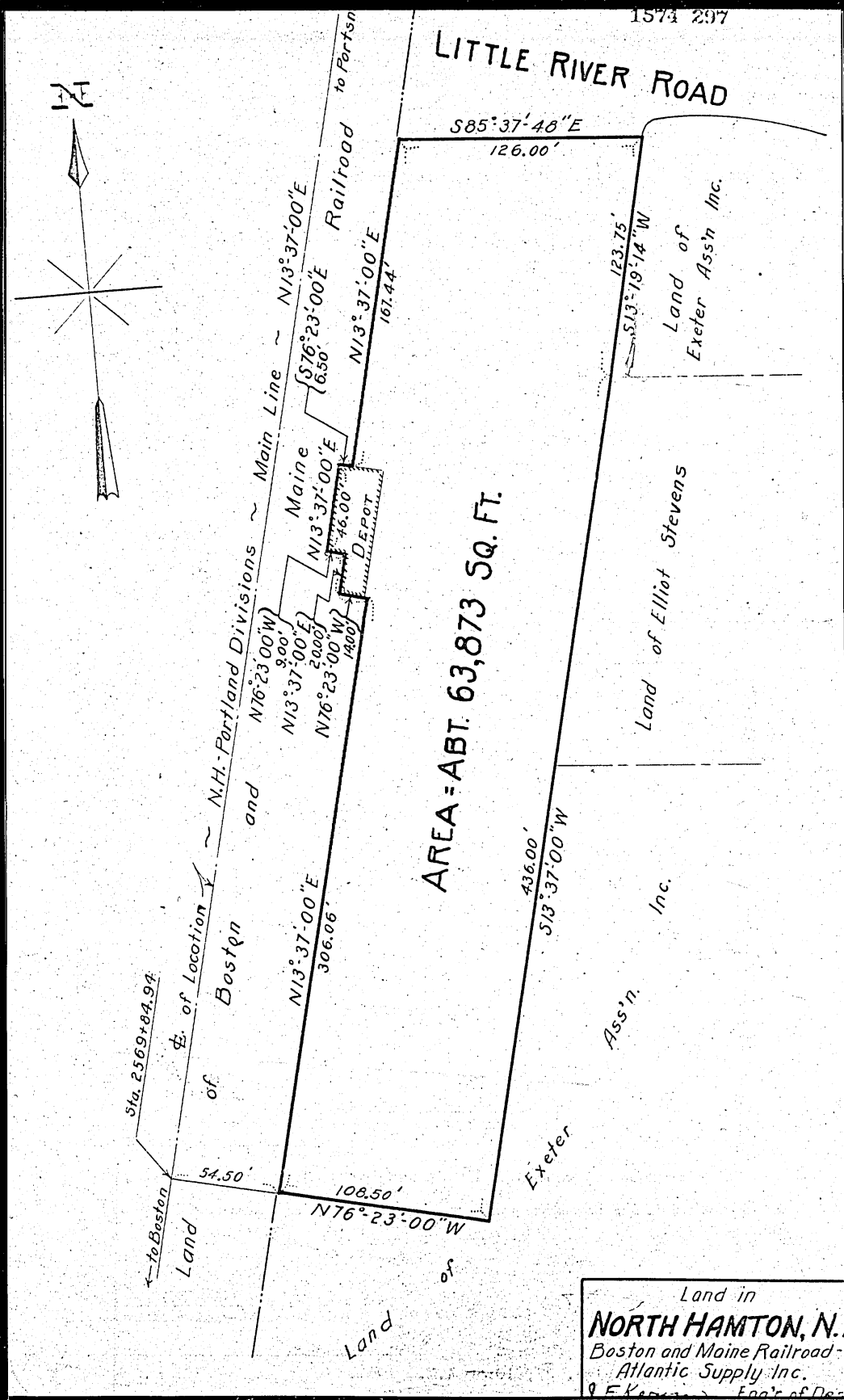
20-48

Boston & Maine R.R. Eastern Divis.,...
Plan of
**LAND PURCHASED AT
NORTH HAMPTON, N.H.**
Scale 1 in. = 100 ft. Aug. 31 1895.



A horizontal ruler with markings from 1 to 3 inches. The ruler is divided into three main sections labeled 1, 2, and 3. Each section is further divided into smaller increments, likely representing tenths of an inch. The ruler is positioned at the bottom of the page, below the 'INCHES' label.

LITTLE RIVER ROAD



**Stockton Services <stockton752@gmail.com>**

RE: Options for North Hampton, NH Depot property

1 message

Twidle, Mike <mtwidle@panam.com>

Thu, Aug 18, 2016 at 10:26 AM

To: Stockton Services <stockton752@gmail.com>

Anne,

Pursuant to our recent discussion, attached find an excerpt from the railroad's valuation plan which reflects the area that I have received preliminary approval to sell. The railroad's property is shown in yellow. The subject parcel (shown in blue hatch marks) includes all land of the B&M Corp., which abuts your clients property. The area to the north may go beyond your clients lot. However, it must be included in the sale area so that the B&M Corp. is not left with a small parcel of land that is of no interest to anyone else.

Should your client be interested in purchasing the subject property, I ask that they submit their highest and best offer based on market conditions and values in the immediate area. Should you have any questions or need additional information, please don't hesitate to ask.

Sincerely,

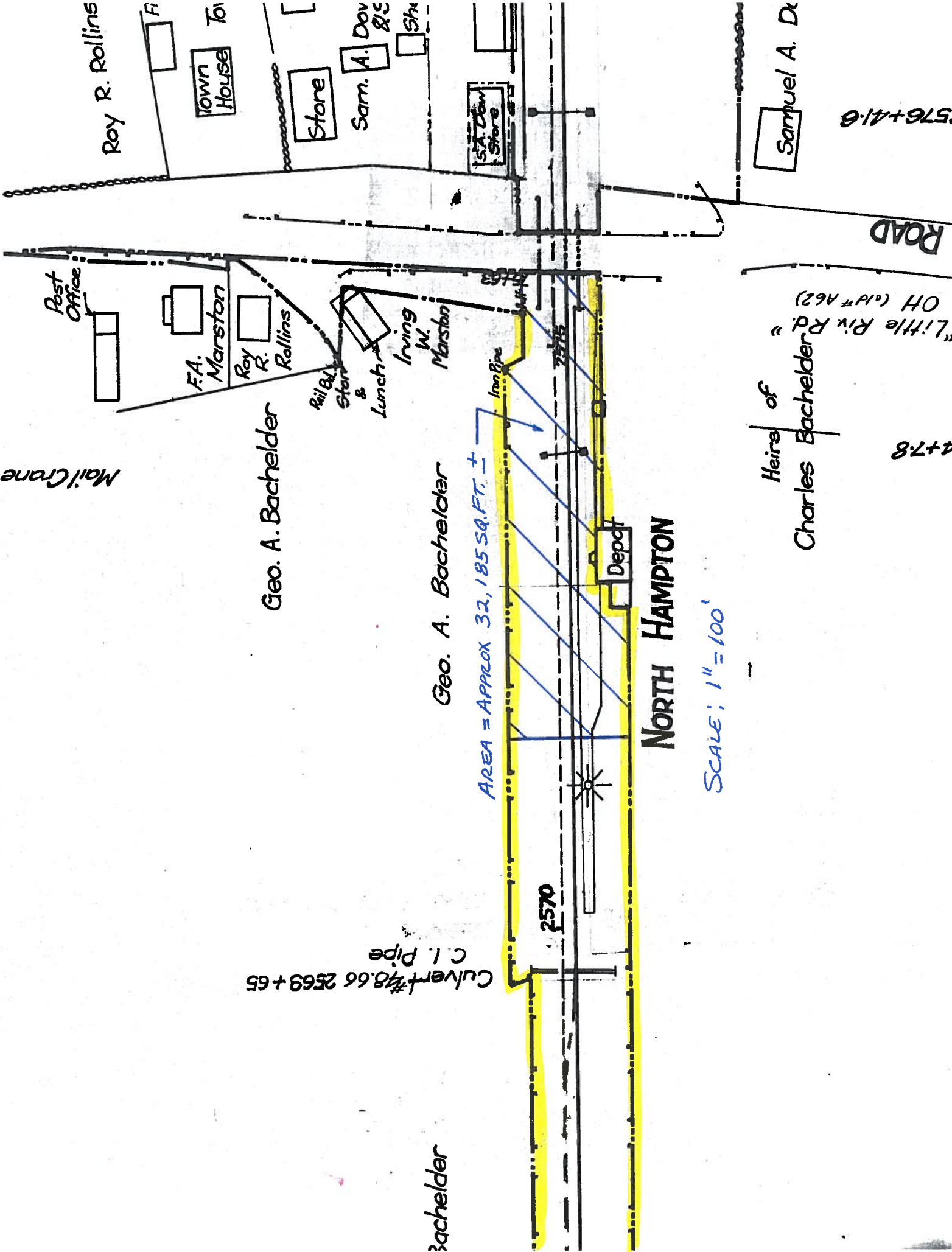
Mike Twidle

Pan Am Systems, Inc.

1700 Iron Horse Park

N. Billerica, MA 01862

(978) 663-6937



Mail Crane

Culvert #48.66 2569+65

Bachelder

Geo. A. Bachelder

Geo. A. Bachelder

AREA = APPROX 32,185 SQ. FT. ±

2570

NORTH HAMPTON

SCALE: 1"=100'

Heirs of

Charles Bachelder

"Little Riv. Rd."
OH (old # A62)

1+78

576+41.6

ROAD

Samuel A. D.

Roy R. Rollins

Town House

Store

Sam. A. Dow

Sh

S.A. Dow Store

Depot

Rail Station & Lunch

Irving W. Marston

Roy R. Rollins

F.A. Marston

Post Office

L A W S

PASSED JUNE SESSION, 1836.

CHAPTER CCXXXVII.

AN ACT to provide a more cheap and expeditious mode of assessing damages for lands or materials taken by Rail Road Corporations. A. D. 1836.

SECTION 1. *Be it enacted by the Senate and House of Representatives, in General Court convened,* That for the purpose of assessing the damages occasioned to the owners of lands or materials by reason of taking the same for the use of any Railroad Corporation that has been, or hereafter may be established under the authority of this State; there shall be a board of Commissioners for each county, consisting of three disinterested and competent persons in each county, one of whom shall be chairman, to be appointed by the Governor with the advice and consent of the council, and to hold their office for the term of two years.

Commissioners
to be appointed.

SEC. 2. *And be it further enacted,* That whenever any land or materials shall be taken as aforesaid, it shall be lawful for any owner thereof, or for said Corporation, to apply by petition to the Commissioners, for the county within which said land or materials may be situated to estimate the damages occasioned by reason of taking the same, and it shall be the duty of said Commissioners on such application to appoint a time and place for commencing the examination of such land or materials, and hearing the parties, of which time and place, notice in writing, signed by the chairman, or in case he shall be interested, refuse or be unable to officiate by reason of sickness or absence, by the

Owners may
apply to commissioners for
compensation.

Time of hearing to be appointed.

Notice given in writing to owners and to the corporation.

A. D. 1836.

other commissioners, shall be given to each of said owners and to said Corporation, in the same manner as is now provided by law, to be given by committee appointed by the Court of Common Pleas, to lay out highways.

Damages to be assessed.

SEC. 3. *And be it further enacted*, That at the time and place appointed, or at an adjournment of the same, the Commissioners shall proceed to commence the examination aforesaid, and to hear the parties; and shall assess the damages occasioned to each owner of land or materials, by reason of taking the same, and shall determine the time and mode of payment and their report under the hands of a majority, containing the names of the several owners, a description of the land or materials of each taken, the amount of damage awarded to each, and the time and mode of payment, being returned to the Court of Common Pleas next to be holden within and for the county in which such land or materials may be situated and duly accepted, shall be binding on the parties and final; *Provided*, however, that in case any one of said Commissioners shall refuse, be interested or unable to attend, it shall be lawful for the other two to proceed and act in the same manner as if all were present, and provided further, that no such application shall be sustained unless made within one year from the time such land or materials shall be taken as aforesaid.

Report to be made to the Court of Common Pleas.

Compensation to commissioners.

SEC. 4. *And be it further enacted*, That each of said Commissioners shall be allowed the sum of two dollars for each day actually and necessarily spent in such service, and five cents per mile travel to and from the place of examination, to be paid in all cases by such Corporation, together with such other legal and reasonable costs and charges as shall be allowed by said Court.

Application of this act.

SEC. 5. *And be it further enacted*, That this act shall apply to all Rail Road Corporations that have been or hereafter may be created under the authority of this state, and that all acts or parts of acts inconsistent with the foregoing provisions be and the same are hereby repealed.

Approved, June 16 1836.

CHAPTER CCXXXVIII.

AN ACT providing for the return of Inventories.

SECTION 1. *Be it enacted by the Senate and House of Representatives in General Court convened*, That the se-

A. D. 1836.
Selectmen to return inventories to Secretary of State.

lectmen of the several towns and places in this State, or a major part of them at the charge of the town or place to which they shall belong, shall transmit and return to the Secretary's office on or before the first day of November next, an entire inventory of the polls and rateable estates of the several towns and places within this State as taken in April the current year, and also an entire inventory of the polls and rateable estates of the several towns and places within this State as taken in April for the year next preceding the present year, which entire inventories shall each be footed and carried off into a column for that purpose, and the several footings so carried out added and the amount stated, which inventory shall contain all male polls from eighteen to seventy years of age to be valued at one dollar and fifty cents each, except idiots and paupers, and except such as are between the ages of eighteen and twenty one and enrolled in the militia—stallions or stud-horses kept for the use of mares that have been wintered three winters and upwards, each valued at ten dollars, and upon all rateable estate both real and personal, which is hereinafter mentioned, viz: polls, real estate including buildings, improved and unimproved land, whether owned by inhabitants or non residents, mills, carding machines, wharves and ferries, factory buildings and machinery, locks and canals, and toll bridges, to be assessed and inventoried in the town where the same may be located; stallions, horses, and mares, wintered four winters or upward; other horses and mares wintered two winters or upwards; jacks, jills and mules that have been wintered two winters or upward; other jacks, jills, and mules wintered four winters or upward; oxen wintered four winters or upward; cows wintered four winters or upward; all neat stock wintered two winters or upward; all sheep wintered one winter or upward; stock in trade whether of merchants, shopkeepers, tanners, curriers, blacksmiths, or other tradesmen, employed in the business of their trades, reckoning the same at the average value thereof for a year, bank stock, whether owned within or out of the State, provided the stock without the State be not taxed in the State in which the bank or banks be situated, money at interest more than the owner pays interest for, including money on hand or deposited in any bank, and all deposits in any savings bank or institution where the whole amount of deposits exceeds one hundred dollars also including all money loaned on or by virtue of any mortgage, pledge, bond or obligation, or note discounted, or any other security what-

Rateable estate.

A. D. 1836
Report.

tion of an act entitled an act regulating process in certain cases, passed January 2d, 1829, be and the same is hereby repealed.

Approved, January 13, 1837.

CHAPTER CCLXXIX.

AN ACT in addition to an act entitled an "Act authorizing the Superior Court of Judicature, to appoint auditors in certain cases."

Auditors to be sworn.
SECTION 1. *Be it enacted by the Senate and House of Representatives in General Court convened,* That no auditor's report shall be given in evidence to the jury, unless before entering upon the duties, the auditor or auditors shall have been duly sworn to the faithful and impartial discharge of the duties assigned to him or them.

SEC. 2. *And be it further enacted,* That at the request of either party the court shall appoint three auditors.

SEC. 3. *And be it further enacted,* That when there is more than one auditor, they shall all meet and hear the case but a report by a majority of them shall be valid.

SEC. 4. *And be it further enacted,* That the court may for any sufficient reason, discharge the auditors, and appoint others, and they may also recommit the report, for revision or future examination, to the same or other auditors.

Approved, December 28, 1836.

CHAPTER CCLXXX.

AN ACT providing for the assessment of damages for land taken for Railroad Corporations.

SECTION 1. *Be it enacted by the Senate and House of Representatives in General Court convened,* That for the purpose of assessing the damages occasioned to the owners

A. D. 1836.

of lands, by reason of taking the same for the use of Railroad Corporations, that have been, or hereafter may be established, under the authority of this State; whenever any land shall be taken, as aforesaid, it shall be lawful for the owners thereof, or for the Corporation to apply, by petition, to the Court of Common Pleas, within and for the county, in which said lands may be situated, to settle the damages occasioned by reason of taking the same; whereupon it shall be the duty of said Court to appoint a committee in the same manner as they shall be authorized by law, at the time the application shall be made, to appoint a committee for laying out highways, with instructions to examine the lands, taken as aforesaid, hear the parties in interest, assess the damages, and report their doings to said Court, at the next succeeding term thereof. And it shall be the duty of said committee, upon the receipt of the commission of their said appointment, to appoint a time and place of meeting for commencing the examination of such lands, and hearing the parties, of which time and place notice shall be given by said committee to the owners of land taken, in the same way and manner, as notice shall at the time of said proceeding, be required by law to be given to land owners, by committees appointed to lay out highways.

SEC. 2. *And be it further enacted,* That at the time and place appointed as aforesaid, or at an adjournment of the same, the said committee shall proceed to commence the examination aforesaid, and to hear the parties; and shall assess the damages occasioned to each owner of land, by reason of taking the same, in manner aforesaid, and make their report under the hands of a majority of said committee, containing the names of the several owners, a description of the lands of each taken, the amount of damages awarded to each owner, to the said Court next to be holden in and for the county in which said lands may be situated; which report, if accepted by said Court with the express consent of all the parties in interest shall be final. *Provided however,* That in case any one of said committee shall refuse, be interested, or unable to attend, it shall be lawful for the other two to proceed and act in the same manner as if all were present; and *provided further,* that no such application shall be sustained, unless made within three years from the time such lands shall have been taken as aforesaid.

SEC. 3. *And be it further enacted,* That either party

Application to the Court of C. Pleas.

Committee to be appointed to hear the parties and assess damages.

To give notice to owners of land.

Subject matter of the report.

Limitation.

A. D. 1836.

Either party may have a Jury.

Report of committee to be evidence to the jury

Two or more may join in the petition.

No petition to be abated on account of death of petitioner.

View of the premises.

Surety to be given to owners of land if requested

who may be aggrieved or in any wise dissatisfied with the estimate made by the committee, as aforesaid, may have a Jury to determine the matter of his complaint, on application therefor, by petition, in writing, to the said Court, unless he should agree with the parties, adversely interested, to have the same determined by a committee to be appointed under the direction of the Court, such application for a Jury may be made at the same term of said Court, at which the said report of the said road committee, shall have been returned and acted upon, or at the next regular term of said Court thereafter; and no such application shall afterwards be received by said Court. The report of the said road committee shall be permitted to go to the Jury, as evidence to be supported and rebutted by other legal testimony.

SEC. 4. *And be it further enacted*, That if two or more persons shall apply at the same time for joint or several damages, they may join in the same petition to the Court; and if several applications shall be pending at the same time, before the Court for a jury to determine the damages, the Court shall cause all such applications to be considered and determined by the same jury and the costs shall be taxed either jointly or severally, as the Court shall determine to be equitable.

SEC. 5. *And be it further enacted*, That no petition to the Court for a jury shall abate or be defeated, by reason of the death of the petitioner, but the executor or administrator, or the heirs or devisees (if they shall be the persons interested) may appear and prosecute such petition, or present a new petition, in the same manner and with the same effect as the original party might have done if living. And if, upon the death of one or more of several petitioners for a jury, the executors or administrators, heirs or devisees of such petitioners, after due notice that such petition is pending, shall neglect to appear or to prosecute, the surviving petitioners may proceed in the same manner as if they only had made application for such jury.

SEC. 6. *And be it further enacted*, That the jurors shall view the premises whenever the Court deem it expedient to send them out for that purpose.

SEC. 7. *And be it further enacted*, That when application for a jury shall be made to the Court to estimate the damages for land taken as aforesaid, the Court shall, if requested by the owners thereof, require the said Railroad

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Company to give security to the satisfaction of said Court for the payment of such damages, as shall have been assessed by said road committee, or as probably may be assessed by the jury, for the land taken as aforesaid; and all the right of authority of said corporations to enter upon or use said land, except for making surveys shall be suspended until they shall give such security.

SEC. 8. *And be it further enacted*, That after the said road committee shall have made their estimate, as aforesaid, the said Railroad Corporations may tender to the said owner or owners of land, the damages so estimated in full satisfaction thereof; and if the said owner or owners shall refuse to receive the same, with costs to be taxed to that period, and shall apply for a jury as aforesaid, he or they shall pay all such costs as shall be caused by such application, arising from such tender, unless upon the final hearing he or they shall recover a greater amount of damages than the sum tendered; and if the said corporations shall apply for a jury and upon a final hearing, the damages as estimated by the said road committee shall not be reduced, the said Corporations shall pay all the costs occasioned by such application.

SEC. 9. *And be it further enacted*, That each of said road committee shall be allowed the sum of two dollars for each day actually and necessarily spent in such service and ten cents per mile travel to and from the place of examination, and a reasonable compensation for notifying the parties, to be paid in all cases by said corporations, and all such other just and legal costs as shall be allowed by said Court.

SEC. 10. *And be it further enacted*, That this act shall apply to all Railroad corporations that have been or hereafter may be created under the authority of this State; and that all acts and parts of acts inconsistent with the foregoing provisions; also all the parts and portions of the following acts, to wit: "An act entitled an act to incorporate the Concord Railroad Corporation, approved June 27, 1835"—also, "An act entitled an act to incorporate the Keene Railroad Company, approved June 27, 1835"—also, "An act entitled an act to incorporate the Boston and Maine Railroad, approved June 27, 1835"—also, "An act entitled an act to incorporate the Nashua and Lowell Railroad Corporation, approved June 23, 1835"—also, "An act entitled an act to incorporate the Eastern Railroad in New-Hamp-

Tender to the owners.

Compensation to committee.

Application of the act.

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shire, approved June 18, 1836"—which authorize and empower said Corporations to take and hold as much land (other than the six rods wide the whole length of the said roads) as may be necessary for stone and gravel for embankments, cuttings, walls, bridges, and abutments, for the proper construction of said Railroads, without the consent of the owner or owners thereof, except so far as said parts and portions of said acts authorize said corporations to take such lands, over six rods in width, as shall be necessary for suitably constructing embankments and excavations and building bridges—in which cases said corporations may take so much land as may be necessary for those purposes, not exceeding four rods in width in addition to said six rods, and not for any purpose of procuring gravel, stone, or any other materials,—also all such parts of said acts as provide for estimating the damages to the owner or owners of lands and materials taken by said corporations, in manner aforesaid and for the purpose aforesaid, and also the whole of an act entitled "An act to provide a more cheap and expeditious mode of assessing damages for lands and materials taken by Railroad corporations, approved June 16, 1836"—be and the same are hereby repealed.

Repeal.

Approved, January 13, 1837.

CHAPTER CCLXXXI.

AN ACT to raise sixty thousand dollars for the use of the State.

\$60,000 to be raised.

SECTION 1. *Be it enacted by the Senate and House of Representatives in General Court convened,* That the sum of sixty thousand dollars shall be raised for the use of the State, which shall be assessed, collected, and paid into the treasury on or before the first day of December in the year of our Lord one thousand eight hundred and thirty seven, and the treasurer is hereby directed seasonably to issue his warrants to the Selectmen of the several towns and places within this State, according to the apportionment of public taxes to be

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made the present session of this Legislature, and the selectmen and assessors are hereby respectively required to assess the sums specified in said warrants and to cause the same to be paid into the treasury on or before the first day of December in the year of our Lord one thousand eight hundred and thirty seven, and the treasurer is hereby authorized to issue extents for all taxes which shall then remain unpaid.

Treasurer may issue extents.

Approved, January 13, 1837.

CHAPTER CCLXXXII.

AN ACT in amendment of, and in addition to an Act, entitled "An act, for laying out highways," passed July 2, 1831.

SECTION 1. *Be it enacted by the Senate and House of Representatives in General Court convened,* That the same proceedings shall be had, and the same privileges and benefits that are given by the act to which this is an amendment shall be extended, and hereby are extended to all towns in the State where the whole of the highway laid out by any committee appointed by the Court of Common Pleas shall be situate in any town as are now had and enjoyed by any town or towns where the committee are appointed and roads laid out by any such committee when the said Court shall have original jurisdiction of the same.

Approved, January 13, 1837.

CHAPTER CCLXXXIII.

AN ACT in addition to, and in amendment of an act entitled an act in addition to an act entitled an act to authorize towns to make by-laws to prevent horses, mules, jacks, neat cattle, sheep and swine from going at large, passed June 17, 1811.

SECTION 1. *Be it enacted by the Senate and House of Representatives in General Court convened,* That all by-laws

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may think proper, in searching and digging for iron and other ores, fossils and mineral substances, on land which may be owned by them; and in analyzing and smelting them, or converting them into useful manufactures; and in erecting and constructing buildings, furnaces and machinery, necessary for facilitating the various operations and purposes contemplated by said company.

SEC. 3. *And be it further enacted*, That any two of the three persons named in this act may call the first meeting of said company to be holden at some suitable time and place in the town of Jackson by posting up a notice at two or more public places in said town expressing the time, place and design of said meeting, at least fifteen days prior to the time of holding the same, at which meeting a clerk shall be chosen, who shall be sworn to the faithful discharge of the duties of his office; and it shall be his duty to record this act and all the proceedings of said company in a book or books provided and kept for that purpose, and to give certified copies thereof when required. And at the same or any subsequent meeting duly notified and holden, the said company may agree on the method of calling and holding future meetings; may choose all necessary officers and agents for managing the business of said company; may divide their capital as joint stock into such number of shares as may be deemed proper, and agree on the manner of transferring them; may order assessments and fix the time of their payment; may establish by-laws for the regulation and government of said company, provided they are not repugnant to the constitution and laws of this State; and may do and transact any business necessary for carrying into effect the objects of this association. All questions shall be determined by a majority of votes, accounting and allowing one vote to each share; *Provided however*, that no member of said company shall be entitled to a greater number of votes than one fifth part of the whole number of shares; and absent members may vote by proxy, duly authorized by writing signed by person or persons represented, and filed with the clerk.

SEC. 4. *Be it further enacted*, That the share or shares in the capital or joint stock of said company shall be liable and holden for the payment of all assessments duly made thereon; and if any member of said company shall neglect or fail to pay the assessment made upon his share or shares after the same shall have become due and payable, the share or shares of such delinquent member, or so many of them as will pay the sum or sums due thereon, with incidental charges,

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may be sold and transferred in such way and manner as said company in their by-laws shall direct and prescribe.

SEC. 5. *And be it further enacted*, That the Legislature may at any time alter, amend or repeal the foregoing act.

Approved, June 17, 1836.

CHAPTER LXVI.

AN ACT to incorporate the Eastern Rail Road in New Hampshire.

SECTION 1. *Be it enacted by the Senate and House of Representatives in General Court convened*, That Abner Greenleaf, Daniel P. Drown, Samuel Lord, William M. Shackford, John Rice, Ichabod Goodwin and Ichabod Bartlett, their associates, successors, and assigns, be, and they hereby are made a body politic and corporate, under the name of the Eastern Railroad in New Hampshire, and by that name shall be, and hereby are, made capable in law to sue and be sued to final judgement and execution, plead and be impleaded, defend and be defended, in any court of record, or in any other place whatever, to make have and use a common seal, and the same to break, alter or renew at pleasure, and shall be, and hereby are, vested with all the powers, privileges, and immunities, which are or may be necessary to carry into effect the purposes and objects of this act, as herein after set forth, and subject to all liabilities incident to corporations of a similar nature; and the said corporation is hereby authorized and empowered to locate, construct, and finally complete, a Railroad, beginning at the line which divides the State of Massachusetts from the State of New Hampshire, at the town of Seabrook, thence running in a Northerly direction to the line which divides the State of Maine from the State of New Hampshire, at the town of Portsmouth, in such manner and form as they shall deem most expedient, and for this purpose, the said corporation are authorized to lay out their road, not exceeding six rods wide, through the whole length thereof, and for the purpose of cuttings, embankments, and obtaining gravel, may take as much more land as may be necessary for the proper construction and security of said road, *Provided however*, that all damages which may be occasioned to any person or persons, corporation or corporations, by the taking of such lands or materials for the purpose aforesaid, shall be

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paid for by said corporation in the manner hereinafter provided.

SEC. 2. *Be it further enacted*, That the capital stock of said corporation shall consist of three thousand shares of one hundred dollars each. The immediate government and direction of the affairs of the corporation shall be vested in five Directors, who shall be chosen by the members of the corporation in the manner hereinafter provided, who shall hold their offices for one year and until others shall be duly elected and qualified to take their place as directors, and the said directors a majority of whom shall form a quorum for the transaction of business; shall elect one of their own members to be president of the Board, who shall also be president of the corporation—shall have authority to choose a clerk who shall be sworn to the faithful discharge of his duties and who shall be clerk of the corporation unless the corporation shall elect some other person to the office, and also a treasurer who shall give bonds to the corporation with sureties to the satisfaction of the directors in a sum not less than twenty thousand dollars for the faithful discharge of his trust.

SEC. 3. *Be it further enacted*, That the President and Directors for the time being, are authorized and empowered by themselves or their agents, to exercise all the powers herein granted to the corporation, subject always however to such general control as the proprietors at any legal meeting of the corporation, may from time to time think proper to exercise, for the purpose of locating, constructing, and completing said railroad, and all such other power and authority for the management of the affairs of the corporation, not heretofore granted, as may be necessary and proper to carry into effect the object of this grant; to purchase and hold land, materials, engines, cars, and other necessary things, in the name of the corporation, for the use of said road; to make such equal assessments, from time to time, on all the shares in said corporation, as they may deem expedient and necessary in the execution and progress of the work, and direct the same to be paid to the treasurer of the corporation; and the treasurer shall give notice of all such assessments; and in case any subscriber shall neglect to pay his assessment, for the space of thirty days after due notice by the treasurer of said corporation, the directors may order the treasurer to sell the share or shares of such delinquent subscriber at public auction, after giving due notice thereof, to the highest bidder and the same shall be transferred to the

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purchaser, and such delinquent subscriber shall be held accountable to the corporation for the balance, if his share or shares shall sell for less than the assessments due thereon, with the interest and cost of sale, and he shall be entitled to the overplus, if his share or shares shall sell for more than the assessments due, with the interest and cost of sale. *Provided however*, That no assessments shall be laid on any share in said corporation, of a greater amount than one hundred dollars in the whole, on each share. And if a greater amount of money shall be necessary to complete said railroad it shall be raised by creating new shares, giving the stockholders in said corporation the right to take said stock in proportion to the stock by them respectively owned in said corporation.

SEC. 4. *Be it further enacted*, That the said corporation shall have power to make, ordain, and establish, all such by-laws, rules, regulations, and ordinances, as they shall deem expedient and necessary to accomplish the designs and purposes, and to carry into effect the provisions of this act, and for the well ordering regulating and securing the interests and affairs of the corporation; provided the same be not repugnant to the Constitution and Laws of this State.

SEC. 5. *Be it further enacted*, That a toll be and hereby is granted and established for the sole benefit of said corporation, on all passengers and property of every description, which may be conveyed or transported upon said road, at such rates per mile as may be agreed upon and established from time to time, by the directors of said corporation, for the transportation of persons and property, the construction of wheels, the form of cars and carriages, the weight of loads, and all other matters and things in relation to the use of said Road, shall be in conformity to such rules, regulations, and provisions, as the Directors shall from time to time prescribe and direct: and said Road may be used by any person, or persons who may comply with such rules and regulations; provided however, that if, at the expiration of five years, from and after the completion or opening said Road for use, the net income or receipts, from tolls and other profits, shall have amounted to more than ten per cent per annum upon the whole cost of said Road, from the time of the disbursements, the Legislature of this State may take measures to alter and reduce the rate of tolls and other profits, in such manner as to reduce the overplus for the next five years, calculating the amount of transportation upon the Road to be the same as the five preceding years, and at the expiration

of every five years thereafter, the same proceedings may be had, and the rate of tolls may be raised in case the net receipts shall have been less than ten per cent during the preceding five years.

SEC. 6. *Be it further enacted*, That the Directors of said Corporation for the time being, are hereby authorized to erect toll houses, and houses for the deposite of merchandise, establish gates, appoint toll gatherers, and demand and receive toll upon the Road, when completed, and upon such parts thereof as shall from time to time be completed; and they shall, from year to year, on or before the second Wednesday of June make report to the Legislature, under oath, of their acts and doings, receipts and expenditures, under the provisions of this act. And their books shall at all times be open to the inspection of any Committee of the Legislature appointed for that purpose. And if said Corporation shall unreasonably neglect or refuse to make such report at the expiration of every year, after the opening of said Rail-road, for every such neglect or refusal, they shall forfeit and pay to the use of the State of New Hampshire a sum not exceeding five thousand dollars, to be recovered by action or indictment in any Court of competent jurisdiction.

SEC. 7. *Be it further enacted*, That the said Corporation shall be holden to pay all damages that may arise to any person or persons, Corporation or Corporations, by taking their land and other property for said Rail-road, where the same cannot be obtained by voluntary agreement, to be estimated by Commissioners as is provided in an act entitled an act to provide a more cheap and expeditious mode of assessing damages for land or materials taken by Rail-road Corporations.

SEC. 8. *Be it further enacted*, That when the lands or other property or estate of any married woman, infant, or person non-compos mentis, shall be necessary for the construction of said Rail-road, the husband of such married woman, and the guardian of such infant, or person non-compos mentis, may release all damages in relation to the land or other property or estate, to be taken and appropriated as aforesaid, as they might do if the same were holden by them in their own right respectively.

SEC. 9. *Be it further enacted*, That if any person or persons shall unlawfully, wilfully, and maliciously, obstruct the passage of any carriage on said Rail-road, or in any way injure, spoil, or destroy said Rail-road, or any part thereof, or shall aid or assist therein, such person or persons so obstructing the passage of such carriage, or so injuring, spoil-

ing or destroying said Rail-road, or any part thereof, or so aiding or assisting therein, shall for every such offence, on conviction thereof before any Court of competent jurisdiction, forfeit and pay a fine not less than thirty dollars nor more than five hundred dollars for the use of the County wherein such offence may be committed, and may be imprisoned for a term not exceeding one year at the discretion of the Court before whom such conviction may be had.

SEC. 10. *And be it further enacted*, That the annual meeting of the members of said Corporation shall be holden on the first Wednesday of September, at such place as the Directors for the time being shall appoint, at which meeting, five Directors shall be chosen by ballot, each proprietor being entitled to as many votes as he holds shares, provided that any member holding more than twenty shares shall be entitled to no more than one vote for every five shares he may hold above twenty; and the three persons first named in this act, or any two of them, may call the first meeting of said Corporation, by causing a notice for the same to be published in the New Hampshire Gazette and Portsmouth Journal ten days prior to the day of meeting, and at said meeting all such officers may be chosen as it would be lawful to choose at the annual meeting, and who shall hold their offices until the first annual meeting, and until others are chosen; and the Directors are hereby authorized to call special meetings of the proprietors, and shall call special meetings whenever a written request shall be presented to one or more of them for that purpose, signed by at least fifteen of the proprietors, giving such notice thereof as the proprietors by their by-laws may direct.

SEC. 11. *Be it further enacted*, That if the said Rail-road, in the course thereof shall intersect or cross any private way, the said Corporation shall so construct said Rail-road, as not to obstruct the safe and convenient use of such way, and if said Rail-road shall not be so constructed, the party aggrieved shall be entitled to his action on the case in any Court proper to try the same, and shall recover his reasonable damages for such injury; and if the said Rail-road shall, in the course thereof, intersect or cross any navigable stream, or any canal, turnpike, or other highway, which has been or may hereafter be laid out in pursuance of the laws of this State, the said Rail-road shall be so constructed, as not to impede or obstruct the safe and convenient use of said navigable stream, or of such canal, turnpike, or other highway. And the said Corporation shall have the power to raise or lower such turnpike, highway or private way, so that said

Rail-road if necessary may conveniently pass under or over the same; and if said Corporation shall raise or lower any such turnpike, highway, or private way, pursuant thereto, and shall not so raise or lower the same, so as to be satisfactory to the proprietors of such turnpike, or to the Selectmen of the town or towns, in which such highway or private way may be situated, as the case may be, said proprietors or Selectmen may require in writing, of said Corporation, such amendments or alterations as they may think necessary. And if the required amendments or alterations be reasonable and proper, in the written opinion of the Court of Common Pleas of the County, in which such amendments or alterations shall be required, and if the said Corporation shall unreasonably and unnecessarily neglect to make the same, such proprietors or selectmen, as the case may be, may proceed to make such alterations or amendments, and may institute and prosecute to final judgment and execution, in any Court proper to try the same, any action of the case against said Corporation, and shall therein recover a reasonable indemnity in damages, for all charges, disbursements, labor, and services, occasioned by making such alterations or amendments, with costs of suit.

SEC. 12. *Be it further enacted*, That it shall be in the power of this State, at any time during the continuance of the Charter, hereby granted, after the expiration of twenty years from the opening for use of the Rail-road herein provided to be made, to purchase of the said Corporation, the said Rail-road, and all the franchise, property, rights and privileges of the said Corporation, on paying therefor the amount expended in making the said Rail-road, and the expenses of repairs and all other expenses relating thereto, with interest thereon at the rate of ten per cent per annum, deducting all sums received by the Corporation from tolls or any other source of profit, and interest at the rate of ten per cent per annum thereon, that shall have been received by the Stockholders.

SEC. 13. *Be it further enacted*, That if one fourth of the stock shall not have been subscribed for, the company organized, and the location of the route filed in the office of the Secretary of this State, previous to the first Wednesday of June in the year of our Lord eighteen hundred and thirty seven, or if the Corporation shall not have laid out and expended the sum of ten thousand dollars towards the completion of said road, previous to the first day of September in the year of our Lord eighteen hundred and

any, or shall fail to complete the same before the first day of June in the year of our Lord eighteen hundred and forty six—in either of said cases this act shall be null and void—otherwise to remain in full force, until this State shall purchase said Rail-road as is herein before provided.

SEC. 14. *And be it further enacted*, That said Rail-road Company shall constantly maintain in good repair, all bridges, with their abutments and embankments, which they may construct for the purpose of passing their Rail-road over any canal, turnpike or other high way or private way, or for passing such private way, turnpike, or other highway, over said Rail-road, and in default thereof shall be liable in an action on the case to refund in damages to the party aggrieved.

SEC. 15. *And be it further enacted*, That nothing in this act shall be so construed or understood as to give to this Corporation any right or power to erect any bridge on, or in any other way to obstruct the free navigation of the Piscataqua River.

SEC. 16. *Be it further enacted*, That nothing in this act shall be so construed, as to affect the rights of any Rail-road Corporation heretofore granted, and that the Legislature may, at any time hereafter, alter, amend, or modify or repeal this act, or any of its provisions.

Approved, June 18, 1836.

CHAPTER LXVII.

AN ACT to incorporate the Sunapee Company.

SECTION 1. *Be it enacted by the Senate and House of Representatives in General Court convened*, That David Harrington, Leonard Harrington, Samuel Larned, Horace Ford, Chester Dunklee, and their associates, successors and assigns, be and they hereby are incorporated and made a body corporate and politick by the name of the Sunapee Company, and by that name may sue and be sued, prosecute and defend to final judgment and execution, and shall be and hereby are vested with all the powers and privileges and subject to all the liabilities which by law are incident to Corporations of a similar nature.

SEC. 2. *And be it further enacted*, That the said Cor-

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being contrary to the Constitution and laws of this State as shall be necessary and convenient for the government of said corporation and the due management of its concerns, and are hereby invested with all the powers and privileges, and subject to all the liabilities contained in the act entitled "An act to regulate Manufacturing corporations," passed July 6th, A. D. 1837.

SEC. 2. *And be it further enacted*, That said corporation be, and hereby is empowered to manufacture in the town of Pembroke in the county of Merrimack, Glass Ware, Window Glass and Glass Plates, and may for that purpose purchase, hold and convey real and personal estate in said town and State of any sum not exceeding fifty thousand dollars as may be convenient for carrying on the manufacture aforesaid. And the said William Parker, Stephen Bates and George W. Doe or either two of them may call the first meeting of said company to be holden in said Pembroke at some suitable place by publishing a notice thereof in some one of the newspapers printed in Concord in said State, expressing the time, place and design of said meeting at least fourteen days before said meeting.

SEC. 3. *And be it further enacted*, That the legislature may, at any time, alter, amend or repeal this act as the public good may require.

Approved, July 4, 1839.

CHAPTER XXII.

AN ACT to provide for the appointment of an additional officer in the company of Artillery in the ninth Regiment.

Be it enacted by the Senate and House of Representatives in General Court convened, That the company of Artillery belonging to the ninth Regiment, fourth Brigade and third Division of the Militia of this State be, and they are hereby authorized and empowered to choose one additional subaltern officer who shall be commissioned and have the rank of Lieutenant, any act inconsistent with the provisions of this act to the contrary notwithstanding.

Approved, July 3, 1839.

A. D. 1839.

CHAPTER XXIII.

AN ACT in addition to an act entitled "An act to incorporate the Eastern Rail Road in New Hampshire.

SECTION 1. *Be it enacted by the Senate and House of Representatives in General Court convened*, That the Eastern Railroad in New Hampshire be, and they hereby are authorized and empowered to locate the Railroad from Salisbury in the Commonwealth of Massachusetts to Portsmouth in this State, upon such site as the directors of said corporation shall deem more eligible, provided said location be definitively made and a plan thereof drawn and filed in the office of the Secretary of State for this State, on or before the fourth day of July, A. D. 1840 any thing in the act to which this is in addition to the contrary notwithstanding. *Provided also*, that the termination of said Railroad in said Portsmouth, as the same is now located shall not be altered.

SEC. 2. *And be it further enacted*, That said Eastern Railroad in New Hampshire be, and they hereby are authorized and empowered to lease a part or the entire right to use said Eastern Railroad in New Hampshire by locomotives, cars, carriages and engines to such persons or corporations and upon such terms as they may deem proper.

SEC. 3. *And be it further enacted*, That nothing in this act contained shall be so construed as to authorize the said Eastern Railroad to locate said road at any place within the chartered limits heretofore granted to the Boston and Maine Railroad, or take away or effect any rights or privileges secured to or reserved by the State, in the act to which this is in addition, and that the Legislature may at all times alter, modify or repeal this act or any of its provisions.

Approved, July 2, 1839.

A. D. 1840.

CHAPTER II.

AN ACT in addition to an act entitled "An act in addition to an act to incorporate the Eastern Rail Road in New Hampshire.

SECTION 1. *Be it enacted by the Senate and House of Representatives in General Court convened,* That so much of the first section of "An act in addition to an act entitled an act to incorporate the Eastern Railroad in New Hampshire," approved July 2, 1839, as provides "that the termination of said Rail Road in Portsmouth, as the same is now located," shall not be altered, be and the same is hereby repealed.

SEC. 2. *And be it further enacted,* That the Eastern Rail Road in New Hampshire be and they are hereby authorized and empowered to locate their Rail Road from the point where said Eastern Rail Road intersects the Greenland road in Portsmouth, between the farm of Andrew Hussey and the homestead farm of the late Joseph Shurburn, deceased, in a north-easterly direction across the homestead farm of said Joseph Shurburn to land of Andrew Shurburn, thence north about fifty-two degrees east across land of Peter Emery, Daniel R. Rogers, Ruth Miller, Robert Ham, Samuel Treat, Daniel H. Treadwell, and on Frenchman's lane, thence crossing the Creek road near the Creek bridge, and across land of Alfred W. Haven and George W. Haven, the Akerman lot, land of Samuel Hale, and land owned in common by John Haven, Mark W. Pierce, and the heirs of the late Benjamin Penhallow, to the north mill-pond; thence across a part of said north mill-pond near to William Storer's distillery on Deer street; thence to Piscataqua river, and striking said river at some point south of the northerly side of Rindge's wharf, and north of the southerly side of land of Jonathan Walker, deceased, and the Old Ferry, so called, in said Portsmouth, any thing in the several acts to which this is in addition to the contrary notwithstanding. *Provided however,* That the act named in the first section of this act shall not be repealed, and the alteration above proposed shall not be made but by consent of the inhabitants of said Portsmouth, expressed in legal town meeting called for that purpose, in which call shall be set forth the object of the meeting. *And provided further,* That in case said alteration shall be made, said Rail Road Corporation shall build and construct a depot south-westerly of Vaughan street, and north-easterly of William Storer's distil-

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lery, and between Deer street and the north burying ground, and at no other place in said Portsmouth, and shall complete said Rail Road to said depot by the first day of March, A. D. 1841, nor shall said corporation be allowed to cross Vaughan or Market streets by steam power.

SEC. 3. *And be it further enacted,* That a further time, and until the first day of March A. D. 1841, be and hereby is granted to said Rail Road Corporation to file the plan and location of their Rail Road in the office of the Secretary of State, any thing in the several acts to which this is in addition to the contrary notwithstanding.

SEC. 4. *And be it further enacted,* That this act shall not be in force unless the said Rail Road Corporation shall comply with all the provisions of this act, nor unless the inhabitants of Portsmouth shall consent to the alteration as above provided; and in case the inhabitants of Portsmouth shall not consent to the alteration as above provided, then it shall be unlawful for said Rail Road Corporation to run upon said Rail Road locomotives or cars until said Road is completed to the terminus as at present located.

SEC. 5. *And be it further enacted,* That the Legislature shall have the right at any time to alter, amend or repeal this act, or any of its provisions.

Approved, June 19, 1840.

CHAPTER III.

AN ACT to incorporate school district No. 12 in Warner.

SECTION 1. *Be it enacted by the Senate and House of Representatives in General Court convened,* That John Couch Jr., Ezekiel Colby, and all other legal voters and their successors in District No. twelve in Warner, with Nathaniel Abbot and Joseph Abbot of Boscawen, and John S. Morrill of Salisbury, and their successors, whose farms are hereby annexed to said twelfth district for the purpose of schooling, be and hereby are made a body politic and corporate, with all the powers and liabilities of school districts as constituted by law in this State, and the further power of assessing and collecting money on the inhabitants and estate in said district for the purpose of building and repairing a school house in said district, in any manner they may by their by-laws prescribe, if not repugnant to the constitution of this State.

LAWS
OF THE
STATE OF NEW HAMPSHIRE,

PASSED NOVEMBER SESSION, 1844.

CHAPTER 128.

AN ACT to render railroad corporations public in certain cases,
and constituting a board of railroad commissioners.

SECTION

1. Commissioners to be appointed.
2. Commissioners removable by governor and council.
3. Railroad corporations public in certain cases.
4. Railroad corporations may petition commissioners to survey route.
5. Commissioners on application, to lay out road.
6. Commissioners to make report to governor and council.
7. Corporation may appeal to governor and council.
8. Governor and council may lease to corporation.
9. Corporation to deposit with state treasurer amount of damages assessed, &c.
10. State may resume the right and privilege of corporation.

SECTION

11. Excess over ten per cent. to be paid into state treasury.
12. Transportation of State or United States' property.
13. Tolls subject to alteration by legislature.
14. Stockholders to pay toll.
15. Locomotives or cars may be placed on road.
16. Corporation shall not discontinue road.
17. Records, papers and files open to inspection.
18. Commissioners to examine condition of each railroad.
19. Commissioners may examine under oath.
20. Compensation of commissioners.
21. Acts repealed.
22. Act to take effect.

SECTION 1. *Be it enacted by the Senate and House of Representatives in General Court convened,* That there shall be appointed in the month of December, A. D. 1844, by the governor, with advice of the council, a board of railroad commissioners, consisting of three. The office of the one first appointed, shall be vacated at the end of one year from the second Wednesday of June, A. D. 1845; of the second, at the end of two years from the second Wednesday of June, 1845; and of the third, at the end of three years from the second Wednesday of June, 1845; and at the expiration of the term of each of said offices, successors shall be appointed in the manner above prescribed, for the term of three years from the time of their appointment, respectively, and so on in the same manner thenceforward, so that one shall be ap-

pointed during the June session of the legislature of every year, to hold their offices each for the term of three years, or until others are duly appointed in their stead, who shall be commissioned by the governor, and sworn to the faithful performance of the duties of their offices, in the same way and manner as justices of the peace are now sworn, and whose duties shall be as is hereinafter prescribed.

SEC. 2. Said commissioners shall be removable by the governor and council; for good cause shown, and all vacancies in the board shall be filled by the governor and council.

SEC. 3. All railroad corporations, which now are or shall hereafter be chartered by the authority of this State, and which shall be unable to purchase the lands for their roads of the owners on their respective routes, at rates to be agreed upon by the parties, are hereby made and declared to be public corporations: *provided*, they adopt the provisions in this act contained, as a part of their charters, which adoption shall be by vote of the corporation at a meeting duly held for that purpose, and by filing in the office of the secretary of state a duly authenticated copy of the record of such vote of adoption, to be by him published, at the expense of the corporation, in the same manner as the laws of the State are now published.

SEC. 4. Any such corporation, having adopted the provisions of this act as aforesaid, may by petition, authorized by vote of the corporation, signed by their president and clerk, apply to said board of commissioners, who shall thereupon proceed to make such a survey of the route proposed by the corporation so applying, as they shall deem necessary, with the assistance of an engineer, to be by them selected, if in their opinion the same shall be necessary, which route shall be within the limits prescribed and authorized by the charter of said corporation; and if after due hearing of the petitioners and of such persons as shall object to the laying out of the proposed railroad, notice of the time and place of hearing being first published in the New Hampshire Patriot and State Gazette, two weeks successively, the last publication to be at least two weeks before the day of hearing, which shall be legal notice to all parties concerned, the opinion of said commissioners, or a majority of them, be that the public good would not be promoted by the laying out of such road, the commissioners shall proceed no further in the matter, unless an appeal be taken as is provided in the 7th section of this act; but if their opinion be that the public good would be promoted by the laying out of the proposed road, the commissioners shall, as seasonably as may be, make report of such decision, containing a description of the road laid out, to the governor and council, which report shall be filed in the office of the secretary of state; and the governor, with advice of the council, at their next session after such report shall be so filed, shall proceed to consider the same, and shall decide whether in their

opinion the public good would be promoted by the laying out of said road; which decision shall be immediately communicated by the governor, by written order, to the railroad commissioners; and the commissioners, if said decision is adverse to the laying out of the proposed road, shall proceed no further in the matter.

SEC. 5. If the decision of the governor and council is favorable to the laying out of the proposed road, the commissioners shall, on written application of the corporation, proceed to lay out said road so surveyed, and, in conjunction with the road commissioners in the several counties where such lands may lie, shall assess the damages sustained by the owners of land, in the same way and manner as road commissioners in the several counties are now by law required to do; and the same right of appeal to the court of common pleas in the county where such lands may lie, to be proceeded with in the same way and manner, is hereby secured to the land owners, as is provided in section eight of chapter fifty-one of the Revised Statutes: *provided*, that the corporation may at any time, if any unexpected difficulty occurs, propose such variations of the original route so surveyed as to them may seem necessary, and apply by petition to the railroad commissioners, who shall examine the proposed variations of the route, and if they deem expedient, lay out such proposed variations, and assess the damages in the same way and manner above provided, and the same proceedings may be had relative thereto as in the case of the original route.

SEC. 6. Said commissioners shall, as soon as they reasonably may, make a report of all their proceedings, containing a particular description of the railroad route laid out, and their assessment of the damages awarded to the several land owners, in the same way and manner as county road commissioners are required to do, in chapter fifty-one of the Revised Statutes, except that such report shall be made to the governor and council, and shall be filed in the office of the secretary of state, and by him recorded in a book kept for that purpose: *provided*, that such damages be paid to the land owners only in case of entry on the route to construct said road, and no land so appraised shall be entered upon for the construction of the road, until the damages assessed as aforesaid, are paid or tendered to those entitled to the same, or to their legal representatives, by the railroad commissioners in behalf of the State, in the same way and manner as is required in case of highways made by towns, and said commissioners shall draw on the state treasurer, by their order, for the sums necessary for that purpose.

SEC. 7. If in any case after the survey made, the decision of the commissioners shall be adverse to the laying out of the proposed railroad, and the corporation shall be dissatisfied therewith, they may through their president or agent, appeal by petition to the governor, who, with advice of council, shall proceed to consider the

matter, and if necessary, give hearing to the parties interested; and if, in the opinion of the executive, the public good would be promoted thereby, shall issue an order, directing the laying out of the proposed railroad, to the railroad commissioners, who shall thereupon proceed to lay out said road, and do all other things as in other cases of roads by said commissioners laid out.

SEC. 8. The governor and council, whenever said road is laid out as aforesaid, shall, on written application of said corporation therefor, by indenture of lease, under seal of the State, signed by the governor and certified by the secretary of state, lease and guaranty to said corporation for a term not less than one hundred years, nor more than two hundred years, the right to construct a railroad over said route, for the public use and benefit, with the right of user in the same to pass and repass with their locomotives, cars and vehicles of transportation thereon, and for other usual and necessary purposes of a railroad, in the same way and manner as they would be allowed to do by their charter of incorporation before granted, which charter shall remain in force, except so far as the same shall be changed and modified by the provisions and restrictions in this act contained: *provided*, that at the expiration of said term, the right so leased shall revert to the State; and such lease may be renewed in the same way and manner as above specified, subject to the restrictions incident to the lease before granted, or to such other restrictions as may be prescribed by the legislature at the time of such renewal: *provided*, further, that if, at the expiration of any such term, the State shall decline to renew by lease the right of said corporation in such road, they shall make to said corporation due compensation therefor; and an attested copy of every such indenture of lease shall be recorded by the secretary of state in the council record.

SEC. 9. Such corporation shall, after the execution of the lease aforesaid, and before the delivery of the same, deposit with the state treasurer for the time being, who is hereby made an agent for that purpose, a sum equal to the whole amount of damages assessed as aforesaid, for the land over which said road shall pass: *provided*, that if the title of any land so taken by the State shall fail, so that a re-appraisal of the same becomes necessary, the corporation shall pay the damage and expense thereof.

SEC. 10. The State may, at any time after twenty years, resume the right and privilege of the corporation in such railroad, on giving one year's notice, and paying to the corporation all it may not have received of its expenditures, and interest on such expenditures, at the rate of ten per cent. per annum.

SEC. 11. Such corporations shall keep exact accounts of all their receipts and expenditures, and make annual reports thereof to the railroad commissioners, who shall annually communicate the same to the legislature, and in any and every year when their net receipts shall be found to exceed the average of ten per cent.

on their expenditures, from the commencement of their operations, the excess shall be paid into the treasury of the State, until otherwise directed by the legislature.

SEC. 12. Such corporation shall, in time of war, insurrection or invasion, carry and transport soldiers, munitions of war belonging to the State, upon its road, when by the State or their authorized agents thereto required, free of charge, and all other property belonging to the State, at such rates as the governor and council shall impose, if the parties do not agree, and shall carry and transport soldiers, munitions of war, and all other property belonging to the United States, and the mails of the United States, when by the United States or their authorized agents thereto required, at such rates and on such conditions as the governor and council of this State shall allow and impose, in case the United States and such corporation cannot agree upon the same, and the United States shall consent to submit the matter to the decision of the governor and council as aforesaid.

SEC. 13. The rates of toll for freight of passengers and merchandize, when the net income of the stock shall exceed ten per cent., shall be subject to alteration and revision by the legislature, according as they shall deem just and expedient.

SEC. 14. All directors, stockholders and officers of said corporation, except when engaged in the immediate management of the cars and repair and care of the road, and excepting also the superintendents, shall be subject and held to pay the same rates of toll for passenger fare and freight, as other individuals are held to pay.

SEC. 15. Such corporations, whenever thereto required by the legislature, shall permit all persons to run locomotives and cars on their road, or may be required by the legislature to draw the cars of such persons with the engines of the corporation on said road, subject to such tolls, rules and regulations as the legislature may from time to time prescribe, having due regard to the income of the said road, as heretofore specified, as well as the convenience, safety and welfare of all concerned: *and provided*, that when cars and engines are placed by others on the road, such others shall be liable to pay all damages arising from their own default or neglect.

SEC. 16. Such corporation shall not discontinue its road, nor neglect to keep the same in good repair, nor omit to discharge its duties in carrying passengers, merchandize or other freight, without the consent of the legislature, and shall in all things conform to the provisions of this statute; and in default thereof, shall be liable to indictment and fine in the county where such want of repair occurs, or in case of any violation of the laws, rules and regulations above named, in any county in which the road or any part thereof may be situated.

SEC. 17. All railroad corporations in this State which have been heretofore or shall hereafter be incorporated, shall keep a full

record of all their doings and submit all their records, papers and files to the inspection of the legislature, its committees or railroad commissioners, when thereto by them required.

SEC. 18. It shall be the duty of one of said commissioners, once at least in each year, without previous notice to the corporation, and as much oftener as the governor may require, to make personally, a full examination into the condition of each railroad corporation in the State, and the management of its affairs, to inspect, so far as may be practicable, all books, papers, notes, records, bonds, and other evidences of debt, and all property, deeds and bills of sale of property of said corporations, to ascertain whether they shall have faithfully and fully observed and performed all their liabilities and obligations to the State and to individuals, and whether they have violated any of the provisions of their charters, or of any law relating to railroad corporations, and report the condition of each railroad to the governor, as soon as may be after such examination, which reports shall be by the governor communicated to the legislature at their next annual session after the same shall be so made to him.

SEC. 19. Any railroad commissioner may examine, under oath, all the officers, agents or servants of any railroad corporation, or any other person, in relation to the affairs and condition of such corporation, and may administer such oath personally.

SEC. 20. Such commissioners shall receive for their services under this act, at the rate of ten cents per mile each way for necessary travel, and three dollars for each day necessarily employed in such services, including expenses, the same to be paid by the corporations, on whose petition they shall make surveys, or into the examination of whose affairs they shall be employed, respectively, excluding the time of traveling to and from the place of survey or examination, and all expenses of any survey and assessments of damages, as aforesaid, shall be paid by the corporation, on whose petition the same shall be made: *provided*, that no one shall be appointed to the office of railroad commissioner, who shall be a stockholder, officer, or interested in any railroad corporation whatever, and in case any one appointed to said office shall become such stockholder, officer, or so interested, he shall immediately thereon cease to hold said office.

SEC. 21. All acts and parts of acts inconsistent with the provisions of this act are hereby repealed.

SEC. 22. This act shall take effect immediately after its passage.

HARRY HIBBARD,

Speaker of the House of Representatives.

TIMOTHY HOSKINS,

President of the Senate.

Approved, Dec. 25, 1844.

JOHN H. STEELE, Governor.

CHAPTER 129.

AN ACT to establish a new proportion for the assessment of the public taxes.

SECTION

1. Proportion of public taxes.

SECTION

2. Warrant therefor to be issued.

SECTION 1. *Be it enacted by the Senate and House of Representatives in General Court convened,* That of every thousand dollars of public taxes hereafter to be raised, the proportion which each town and place shall pay, and for which the treasurer of the State is hereby authorized to issue his warrant, shall be as follows, to wit:

COUNTY OF ROCKINGHAM.

Atkinson,	two dollars thirty cents,	\$2.30
Brentwood,	three dollars sixty-six cents,	3.66
Candia,	four dollars,	4.00
Chester,	six dollars twenty-eight cents,	6.28
Danville,	two dollars six cents,	2.06
Deerfield,	six dollars twenty-five cents,	6.25
Derry,	seven dollars eighty-four cents,	7.84
East Kingston,	two dollars eighty-one cents,	2.81
Epping,	five dollars ninety cents,	5.90
Exeter,	twelve dollars four cents,	12.04
Greenland,	three dollars twenty-eight cents,	3.28
Hampstead,	three dollars fifty-five cents,	3.55
Hampton,	five dollars,	5.00
Hampton Falls,	four dollars three cents,	4.03
Kensington,	three dollars twenty cents,	3.20
Kingston,	three dollars seventy-five cents,	3.75
Londonderry,	five dollars fourteen cents,	5.14
New Castle,	one dollar seventy-two cents,	1.72
Newington,	one dollar ninety-five cents,	1.95
New Market,	nine dollars thirty-three cents,	9.33
Newtown,	two dollars twenty-one cents,	2.21
North Hampton,	three dollars sixty-nine cents,	3.69
Northwood,	four dollars forty-three cents,	4.43
Nottingham,	four dollars ten cents,	4.10
Plaistow,	two dollars eighty cents,	2.80
Poplin,	two dollars sixteen cents,	2.16
Portsmouth,	forty-seven dollars fifty cents,	47.50
Raymond,	two dollars ninety-four cents,	2.94
Rye,	three dollars eighty cents,	3.80
Salem,	four dollars sixty-four cents,	4.64
Sandown,	two dollars thirty cents,	2.30

Supreme Court of New Hampshire Sullivan.

BAILEY v. SWEENEY

64 N.H. 296 (N.H. 1886)

BAILEY v. SWEENEY.

Supreme Court of New Hampshire
Sullivan.

Decided December, 1886.

A railroad corporation have no right, as against the owner of the soil, to give away hay cut by their servants upon land within the limits of their location.

TRESPASS AND TROVER, for taking and carrying away three tons of hay. Facts found by the court. The hay in question was cut by servants of the Sullivan County Railroad upon land within the limits of their location where their road crosses the plaintiff's farm. After it had been cut, and before its removal, the corporation refused to allow the plaintiff to take it, but gave it to the defendant, one of their servants, who carried it away to his own use. The rights and title of the corporation in the land where the hay was cut were acquired by condemning and taking it for railroad purposes by legal proceedings. Due precaution against fire and the safe operation of the road required that the grass and bushes *297 growing by the side of the track should be cut and removed, or burned upon the ground. The court found for the plaintiff, and the defendant excepted.

Ira Colby, for the plaintiff.

Albin Martin, for the defendant.

ALLEN, J.

The Sullivan County Railroad, whose servant the defendant is, and by whose direction and gift the grass was taken and used, assume the defence of the case. The grass grew within the limits of the railroad upon land that had been a part of the plaintiff's farm and taken for railroad purposes. The fee in the land taken for a railroad remains with the owner from whom the land was taken. The railroad have the possession and control of the land to use for constructing, maintaining, and operating a railroad. *Blake v. Rich*, 34 N.H. 282. If there was a reasonable necessity for the defendants in interest to remove the grass for the safety of passing trains, or as a precaution against the spread of fire, for the damages from which the railroad are liable, it was not necessary to sell or give away the grass; nor did their possession of the land for railroad purposes entitle them to appropriate the hay. *Chapin v. Sullivan Railroad*, 39 N.H. 564, 570; *Aldrich v. Drury*, 8 R. I. 554; *Taylor v. New York L. B. R. R. Co.*, 9 Vroom 28; *Pierce Railroads* 160. If the safe operation of the railroad and the protection of their business made it necessary to exclude the plaintiff from the land occupied by the road, there is nothing to show that the defendant could not have left the grass, or placed it where the plaintiff could conveniently have taken it. *Baker v. Shephard*, 24 N.H. 208, 218. The servant of the railroad, by their direction, appropriated and used the grass for his own benefit; and this, not being necessary to nor having any connection with the management of the road, was a conversion of the plaintiff's property by the defendant.

Judgment for the plaintiff

CLARK, J., did not sit: the others concurred.

17 N.H. 47
Superior Court of Judicature of New Hampshire.

CONCORD RAILROAD

v.
GREELY.

July Term, 1845.

Opinion

****1 *47** The constitution of New-Hampshire is not so much a grant of specific powers as a limitation upon the exercise of general powers. Therefore, whether the general court have not all the power justly appertaining to a legislature, except so far as restrained by that constitution and the constitution of the United States, *quere?*

The twelfth article of the bill of rights, prohibiting the taking of private property for public uses, without the consent of the owner, or the consent of the representative body, by implication forbids the taking of such property for private uses, and authorizes the legislature to appropriate it by law to public uses.

What are public uses, justifying the exertion of this power, is a question for the court in deciding upon claims dependent upon the act of the legislature under color of it.

The determination of the legislature as to the expediency of taking private property for a public use, is final and conclusive in each case, affording a lawful ground for the act.

***48** A railroad is in general such a public use as affords just ground for the taking of private property and appropriating it to that use.

A railroad of a private corporation, if for the use of the public, paying a toll to the owners, subject to be regulated by law, is such an object as to justify such appropriation of private property.

The constitution of the United States, which forbids that private property be taken for public use without just compensation, does not restrain the legislation of the general court of this State.

PETITION, setting forth that the petitioners have located their railroad through certain lands of Joseph Greely, and of other

persons named, situated as described in the petition; that they have not been able to agree with those parties, or any of them, for the purchase of such land, or as to the sum or sums to be paid for taking the same for the road; that they have filed with the clerk of the court of common pleas for the county in which the lands lie, security for the damages, as required by the act of December 23, 1840, and praying for an appraisal of the damages to those owners, according to law.

The petition was filed in the court of common pleas, and an order of notice, returnable at the August term, 1841, was issued, in pursuance of which Joseph Greely and others of the parties appeared; and a commission to Simon P. Colby, Hiram Monroe and Perley Foster was granted, authorizing them to make the appraisal, and a return of their doings under the commission. By their return, made at the February term of that court, in 1842, it appeared that they had given notice to the parties, and made an appraisal of damages to Joseph Greely at a sum named in the report. Other particulars sufficiently appear in the opinion of the court.

West Headnotes (8)

[1] **Constitutional Law**

🔑 **Nature and Scope in General**

The constitution is not a grant of power to the legislature, but it is a limitation of its general powers.

[1 Cases that cite this headnote](#)

[2] **Constitutional Law**

🔑 **Eminent Domain**

Eminent Domain

🔑 **Conclusiveness and Effect of Legislative Action**

What are public uses for which private property may be taken is a question for the court, in deciding upon claims depending upon the act of the legislature under color of it.

[4 Cases that cite this headnote](#)

[3] **Eminent Domain**

🔑 **Public Use**

Eminent Domain

🔑 [Taking for Private Use](#)

The constitutional inhibition against taking private property for public use without compensation by necessary implication prohibits taking private property for private uses.

[3 Cases that cite this headnote](#)

private property shall not be taken for public use without just compensation, are intended solely as a limitation on the exercise of power by the government of the United States, and are not applicable to the legislation of the states.

[5 Cases that cite this headnote](#)

[4] **Eminent Domain**

🔑 [Railroads](#)

This rule will include the railroad of a private corporation, open to the public use on the payment of toll, subject to be regulated by law.

[1 Cases that cite this headnote](#)

[5] **Eminent Domain**

🔑 [Railroads](#)

Generally, taking land for a railroad is a taking for a public use, which will justify an appropriation of private property.

[1 Cases that cite this headnote](#)

[6] **Eminent Domain**

🔑 [Jurisdiction of Courts in General](#)

What is such a public use as will justify the exertion of this power is a question for the court to pass upon, in deciding upon claims dependent on legislative acts under it.

[Cases that cite this headnote](#)

[7] **Eminent Domain**

🔑 [Conclusiveness and Effect of Legislative Action](#)

The legislative determination as to the expediency of taking private property for public use is in each case final and conclusive, and furnishes a lawful ground for the taking.

[2 Cases that cite this headnote](#)

[8] **Eminent Domain**

🔑 [Constitutional Provisions](#)

The provisions in the fifth amendment to the constitution of the United States, declaring that

Attorneys and Law Firms

Upham (with whom were *C. H. Atherton*, *Farley*, and *D. Clark*), for the petitioners, cited and commented upon 1 Bald. 205, *Bonaparte v. Cam. & Am. R. R.*; 7 Peters 247, *Barron v. Mayor of Baltimore*; Id. 551, *Lessee of Livingston v. Moore*; 20 Johns. 106, *Rogers v. Bradshaw*; *49 8 Wend. 85, *Livingston v. Mayor of New-York*; 14 Id. 51, *Bloodgood v. Mohawk & Hudson R. R.*; 20 Johns. Ch. 343, *Jerome v. Ross*; 2 Id. 166, *Gardner v. Newbury*; 7 Pick. 495, *Charles Riv. Bridge v. Warren Bridge*; 4 Little, (Ky.) 323, *Jackson v. Winn*; 4 T. R. 794, *Plate Manufacturers v. Meredith*; 1 Bl. Com. 139; *Grotius de Jure*, b. 3, ch. 19; ch. 20, sec. 7; *Puff. de Jure*, b. 8, ch. 5, secs. 3 and 7; *Bynk. Ques.*, b. 2, ch. 15; 2 Kent 339.

Abbot & Fox, for the defendant.

GILCHRIST, J. ^{a1}

**2 The first section of the charter, which was granted in 1835, authorizes this corporation to locate and construct a railroad from a point in the south line of the State, in either of the towns of Hudson, Pelham or Salem, or in Nashua Village, to the town of Concord. The road is not to be made more than six rods in width; and for the purpose of cuttings, embankments, &c., the corporation are authorized to take as much more land as is necessary for the proper construction and security of the road.

By the seventh section the corporation are holden to pay all damages that may arise to any person or corporation, by taking their land or other property for the railroad, when the same cannot be obtained by voluntary agreement, to be estimated by a committee to be appointed for that purpose by the court of common pleas for the county wherein such damages shall accrue; and said court may issue execution, founded upon the report of such committee, against the corporation, for such sum in damages as the committee shall report, together with costs.

On the 22d day of May, 1841, the corporation filed the petition in the court of common pleas for the county of Hillsborough, stating, among other things, that they had *50 located their road over land of Joseph Greely, of Nashua, and had taken his land for the purpose of the railroad; that they had not been able to agree with him for the purchase of the land, or on the damages to be paid him for taking it, and that they had filed with the clerk security for the damages, as required by law. Upon this petition an order of notice was issued, and, at the August term of the court of common pleas, an appointment was made of a committee to appraise the damages to Mr. Greely and others, and they appraised his damages at the sum of four hundred dollars.

At the February term of the court of common pleas in 1842, upon the coming in of the report of the committee, Mr. Greely filed twenty-one exceptions.

The first of these is, because his lands were taken without his consent, before making any compensation therefor, and for private purposes, and that all the statutes authorizing such taking of lands by such corporations are repugnant to the constitution of this State, and to the constitution and laws of the United States.

The second exception is, because no authority is given by law to the court of common pleas to appoint a committee to appraise the damages in such cases.

The third exception is, because the several acts respecting the Concord Railroad corporation are private, and special in their nature, affecting his interests and rights injuriously, and were enacted without notice to him or to the public.

In answer to the first exception, the corporation say, that they are lawfully and constitutionally authorized to take the land of Greely for the use of the railroad in the manner they have done.

In answer to the second exception they say, that the court of common pleas had all the power which they have assumed to exercise in the appointment of the committee, and in the proceedings consequent upon that act.

****3 *51** In answer to the third exception, they say that they had a right to take the lands of Greely in the manner in which they were taken, by the laws of the State. Answers are also made to the other exceptions.

To these answers, Greely replies substantially by demurrer, saying that the answers are insufficient in law, and that the report ought not to be accepted.

Such are, in substance, the exceptions taken by the defendant to the acceptance of the report, which are based upon the ground that the charter of the corporation is unauthorized by the constitution of this State. They raise the question, brought before us by this case for the first time, whether the charter of the corporation be authorized by the constitution; in other words, whether the constitution of New-Hampshire has authorized the legislature to incorporate individuals, with power to take the lands of other persons for the uses of railroads intended for the conveyance of freight and passengers, the profits of which shall belong to the stockholders. And, laying aside, for the present, the consideration of any question that might arise under the constitution of the United States, and any question as to the mode provided by the law for making compensation for the lands taken, the necessity of making which, in some manner, no one doubts, we propose to consider the question in its relations to the constitution of New-Hampshire.

There is but little in the constitution or bill of rights bearing directly on this question. The general powers with which the legislature is invested are stated in the fourth clause of that part of the constitution which treats of the general court.

That body is authorized "to make, ordain and establish all manner of wholesome and reasonable orders, laws, statutes, ordinances, directions and instructions, either with penalties or without, so as the same be not repugnant or contrary to this constitution, as they may judge *52 for the benefit and welfare of the State, and for the governing and ordering thereof, and the subjects of the same."

If a law be not repugnant or contrary to the constitution, it will be valid, and should be enforced, however inexpedient it may be in fact, or may appear to be to the public, or to those entrusted with the administration of justice. If it be repugnant, or contrary to the constitution, it should not be enforced, and will be invalid, however proper it may be in fact, or however much the public necessities may seem to require it. The whole question of expediency or inexpediency, and whether a law be or be not for the benefit and welfare of the State, is given to the legislature, subject only to the condition that it shall not be repugnant or contrary to the constitution.

If, then, the charter in question be thus repugnant, we must pronounce it invalid without regard to the public convenience, or to the amount of capital that may have been invested under it. If it be not repugnant, our duty will be to declare it a constitutional law, and to give effect to it as such, whether it be an expedient or an inexpedient one.

****4** The twelfth clause of the bill of rights admits of a more direct application to this question than any other to be found in the constitution, but even this clause has not within itself all the requisite precision to enable us to determine the question. It is in these words:

“Every member of the community has a right to be protected by it in the enjoyment of his life, liberty and property; he is, therefore, bound to contribute his share in the expense of such protection, and to yield his personal service, when necessary, or an equivalent. But no part of a man's property shall be taken from him or applied to public uses, without his own consent, or that of the representative body of the people.”

***53** Now, so far as we may judge of the meaning of an instrument from the language used, and the connection in which a sentence is found, the framers of the constitution intended to speak in these two sentences of the duty of protection which the community owed its members; of the reciprocal duty which the citizens owed the community, of paying for that protection, and of the manner in which the property of the citizens should be taken and applied to defray that expense. They say, in a more condensed form, “The community must protect its members; each member is bound to pay for that protection; but his property shall not be taken from him, or applied to public uses, without his own consent, or that of the legislature.”

Now here is a public use indicated by the nature of the subject. To resist foreign aggression; to put down domestic insurrection; is to furnish to the member of community that protection in the enjoyment of his life, liberty and property. To provide a mode by which he shall be recompensed for property justly or unjustly taken from him, is to protect his property. To defray the expenses of a necessary army, the expenses incident to the administration of justice, the citizen is bound to contribute a proportion of his property, in pursuance of a law for that purpose, or of his voluntary act. These are public uses, in the largest sense of the word; for without some provision for cases and emergencies of this description, no community could exist in a civilized state;

and these are undoubtedly among the public uses which were contemplated by the makers of the constitution.

If then it be true that the twelfth article of the bill of rights was intended only to declare the duty of the citizen to pay his just share of the expenses of civil government, in such manner as might be provided by the legislature, the charter before us is not repugnant or contrary to the constitution, for this is the only clause with which it has the appearance of coming in conflict.

***54** But let us suppose that the intention of the article was not merely to state a principle declaratory only of the reciprocal rights and duties of the government and the governed, but that the language was intended to include all cases where the property of a citizen is taken from him. Even upon this ground it would be difficult to maintain the position that the charter is repugnant and contrary to the constitution--trying that instrument by the language it contains, and laying out of sight arguments derived from other sources. A man's property shall not be taken from him without the consent of the legislature. The implication is, that with that consent it may be taken from him; and here the corporation have obtained the consent of the legislature. So his property shall not be applied to public uses without the consent of the legislature. But if the purpose of a railroad be a public use, that consent has been obtained. But the words of the former part of the sentence, literally taken, would justify the legislature in taking a man's property from him and giving it to another; for if a law prohibit the doing of a thing in specified cases, it carries with it, by implication, a license to do it in general. And this result, erroneous as it might seem to one who had not reflected on the origin of power, as admitted in this country, is not startling to any one who is not afraid to go as far as sound reasoning will lead him. What is the power of a State legislature in those particulars in which it is not limited by the constitution? Clearly it is supreme within its appropriate sphere. It may make all such laws as do not outrage the rights of the person and of property, upon a proper regard to which civilized society depends so much for its existence; and when we say that it cannot make a law thus obnoxious, we mean rather that society could not exist if such laws were passed, than that the constitution has in terms prohibited them. Indeed, the constitution consists not so much in grants of power as in limitations upon its exercise. It ***55** declares that the legislature shall not make such or such a law; that this or that thing shall not be done; as if, but for such a prohibition, the general powers of the legislature were such that they might do so. And why might not the

legislature, but for these limitations, do the acts and pass the laws which by the constitution they are restrained from doing? There is an essential difference in this respect between the constitution of this State and that of the States generally, and the constitution of the United States. The latter is made up entirely of delegated powers. "All powers," it is there said, "not delegated to the United States by the constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people." But the constitution of this State is not so much a constitution delegating power, as a constitution regulating and restraining power. All power, in the largest terms, applicable to such a subject, is conferred by the people, through the constitution, upon the general court, subject to the condition, in its exercise, that it shall pass no laws repugnant to the limitations and restrictions in the constitution. "The legislature of a State," says Mr. *Butler*, the late attorney-general of the United States, in the case of *Beekman v. Saratoga Railroad Co.*, 3 Paige 58, "unless restrained by the constitution would even have power to take private property for private use."

****5** This, however, is not the kind of reasoning to be applied in endeavoring to ascertain the meaning of a constitution, which, expressed, from the necessity of the case, in large and comprehensive terms, contains broad declarations of principles merely, which are to be applied to cases as they arise, in the liberal spirit which dictated the language of the instrument.

Viewing the question, therefore, in the light thrown upon it by these considerations, we have no doubt that a law providing merely that the property of A should be ***56** taken from and given to B, either with or without a consideration, would be repugnant to the constitution. Not indeed to the letter of any particular clause contained in it, but to its spirit and design, which, throughout the whole, discountenance the idea that the property of the citizen is held by any such uncertain tenure as the arbitrary discretion of the legislature in a matter of mere private right, unconnected with any considerations of public utility. Such a law would not be so much in repugnance to the constitution as it would be to the principles which hold human society together; which, while they recognize the power of the legislature to be supreme, do not admit it to be arbitrary. Burlamaqui Polit. Law, part 3, chap. 1, secs. 10-18. The right of eminent domain authorizes the taking of private property only when required by the public interest.

The same spirit which takes us beyond the mere letter of the constitution, and which will not permit us to circumscribe

the rights of the citizen by the language of the instrument in its literal meaning, will compel us to go abroad for the true meaning of the terms used, if a definition of them cannot be found in the constitution. Admitting, then, that the twelfth article in the bill of rights prohibits the legislature from taking the property of a citizen from him against his consent, and applying it to any other than public uses, the question arises whether its application for the necessary purposes of a railroad be an application of it to the public use.

The meaning of these words cannot be ascertained in reading the constitution. No attempt is there made to define them, nor is there any clause in that instrument which, by its bearing upon them, teaches us the precise meaning which they were intended to bear. We must, therefore, look elsewhere for a true construction.

The words are very comprehensive, and may include a multitude of objects. Their construction is a matter for ***57** judicial decision; because, however decided may be the opinion of the legislature that property in a given case has been taken for a public use, still, whenever the question arises whether it has thus been taken, within the meaning of the constitution, it becomes our duty to determine it. The opinion of the legislature is not final upon this, more than upon any other point, where claims, cognizable in this court, depend upon the question whether or not an act of that body is or is not in conflict with the constitution. Thus, even if the legislature should declare that an act taking the property of A, and giving it to B as his private property, was an application of it to public uses, no one would contend that such a declaration made that public, which, in its nature and object, was private.

****6** Upon the question what is and what is not a public use, various considerations have been urged, both before us and in different parts of the Union. It has been said that property could not be properly alleged to be taken for the public use, unless, when taken, it should belong to the public as owning it; that the words substantially mean, that the property should be changed, by the act of application, and should belong to the community at large. This position can be maintained only upon the assumption, that the words "public use" are equivalent to the words "public ownership," or with other words which express the idea that the private property, by the act of application, becomes the property of the public. There is nothing in the constitution that authorizes us to extend the words "public uses" into such a meaning. No one contends that land taken for a common highway is not taken for the public use; and yet the community own nothing but a right of

passage, and a right to keep it in repair. The only distinction, in that respect, between a common highway and a railroad is, that in one case the public pay for the right of way, and are compensated by the use and enjoyment of it; while, in the other, the corporation *58 pay for it, and receive a compensation in the tolls which they take from those who desire to use it. This, then, cannot be the criterion by which to determine if the use of the property taken be a public use or not.

Again, it has been argued, that the public uses for which private property can be taken must be such as existed when the constitution was adopted, and that, as railroads were unknown at that time, an application of private property for their use could not have been contemplated by the constitution. This argument would prove too much, because it would show that society should remain where it stood fifty-three years ago, and would make us forget all the progress that the human race has made in that time in the arts, in intelligence, in the science of government, and in all that elevates a nation. This position would confine the powers of the constitution to limits within which it cannot reasonably be supposed to have been intended to be confined; restraining the otherwise versatile energies of the government from adapting themselves to new exigencies that might arise in the anticipated duration for which it was created, and limiting the benefits it was designed to confer upon the State to such as were capable of being accomplished by means then known; as if physical science and discovery could never yield new elements of power and wealth, and the wisdom of man could never devise other avenues than were then in use, for the pursuit of the legitimate ends of society, and which might require the strong and benignant arm of the government to aid in opening. The makers of the constitution had not in view the subject in question. They did not intend to include, as among the uses for which private property might be taken, the construction of a railroad. But they knew nothing of it, and it is equally plain that they did not intend to exclude it. There is no indication that it was ever their purpose to declare what were the public uses intended, but to leave the question *59 to be decided as cases might arise requiring the action of government and the adjudication of courts. It cannot, therefore, reasonably be argued, that because an improvement, whether of a physical, intellectual or a moral nature, was not known at the date of the constitution, it cannot, although public in its character and objects, derive aid from the power in question, and that the charter in question is for any such reason unwarranted by that instrument, and therefore illegal.

**7 It has been and may be said that powers of this kind cannot be exercised except through the medium of a public corporation; that this is not a public but a private corporation, and consequently cannot take the lands of individuals for its purposes. It is unnecessary now to undertake to make a precise definition of the nature of a public corporation as distinguished from a private corporation. The line between them is often-times difficult to be distinguished. Definitions are to be found in the books, it is true, of a public corporation; but the definitions do not exclude all cases which are not included in them. The question involved in this discussion is, not what is a public and what is a private corporation, but whether this corporation be one that may hold the land of an individual for the public use. To settle this point it seems necessary first to determine what is the public use, in the sense of the constitution; or, if the expressions there be so indeterminate that no accurate idea can be derived from them of the sense contemplated by the constitution, then what is the "public use," in the proper meaning of the words?

It will not probably be denied that the legislature may take the land of an individual, pay the damages therefor, appropriate the land or the right of way to the purposes of a railroad, and remunerate the State for the expense thus incurred by imposing a toll upon all persons who travel over it, and cause the receipts to be paid into the *60 treasury. This toll or fare would, in that case, be only a mode by which those who receive the immediate benefit of the road compensate the public for the money which the public has expended in building the road. This money may be returned in the shape of tolls, as supposed, or in the form of a tax levied like other taxes; and it should be levied for the benefit of the public, because all the expenses would have come from the public purse. The railroad, in the case supposed, would be for the public use, and for the public use the land would have been taken. This would, without doubt, be a public use.

If so, then why is it not equally for the public use, though the road be built by a corporation chartered by the legislature? Has it fewer advantages for the public? Is it less a public benefit? And where the charter, as in this case, is under the control of the legislature, have the public, and has each individual composing the public, less right to the use and enjoyment of it, and to be accommodated and considered, as to the amount of toll--the times of running the cars, the speed, and every thing else connected with the travel--than if the road were the property of the public? And does the public use of the railroad depend on ownership? To these questions we answer in the negative. And our opinion is, that whether the road be

made at the expense of the State and paid for by fares paid by travellers, or whether it be made by individuals, acting under a law of the State, at their own expense, and for the sake of a remuneration to be derived from a like source, cannot be the criterion by which to determine whether the use be public, and the charter, in consequence, constitutional.

****8** We have thus far examined the question as to what are the legitimate uses for which the property of citizens may be taken, by endeavoring to analyze some of the prominent objections supposed to be taken to the constitutionality of the charter, for the purpose of ascertaining whether ***61** the true question were involved in any of them; and we think it is not. It remains to us, therefore, to determine what meaning is to be attached to the words “public use,” and whether that use exists here.

Not that we would undertake the very difficult, if indeed practicable task, of framing a definition which shall determine in every case the question of the validity of a law appropriating to such use the land of individuals. Such a definition should comprehend not only all the existing public purposes justifying such appropriation, but should anticipate the future exigencies of society, demanding new laws and varied exercise of the protecting and fostering aid of the State. It is sufficient for this occasion to say that the use of a thing may be considered public, so far as to justify the exertion of the legislative prerogative in question, if it be devoted to the object of satisfying a reasonable pervading public demand for facilities for travel, for the transmission of intelligence, and of commodities not extraordinary, as compared with those enjoyed by communities of like pursuits. Such objects rank themselves, in fact, among the first duties of a government, from the moment that it has secured itself against foreign aggression and established tranquillity within its own borders, as the necessary means by which civilization is achieved and perpetuated. Without these the citizen pines in seclusion. The bounties of nature and the fruits of his labor, which commerce would transmute into wealth, are wasted, and he provides himself with difficulty, if at all, with those things which embellish home, and render its appropriate enjoyments possible.

These objects are among the most onerous of the burdens to which the citizen is called to submit. A very large fraction of the improved land in the State is first devoted; a highway is constructed at an expense which draws heavily upon the resources of the inhabitant; year after year he is required to

repair the waste which the elements have ***62** made, or the unavoidable wear occasioned by the appropriate use of it.

The history of this State shows plainly that they have been deeply considered by the people and their legislatures in these points of view, and that, while the large sums required have been liberally bestowed by the public for the construction and maintenance of the common highways, numerous charters have been asked for and obtained for toll-bridges and turnpike roads, inviting the investment of capital, for the purpose of aiding, in the promotion of these highly necessary objects of internal improvement, the infant resources of the public treasury. And the fact is very significant of the construction given to the constitution by its framers, and by their contemporaries, that within a very short time from its adoption a very large number of charters for turnpike roads were granted, containing provisions almost identical with the one which is the present subject of complaint. Nothing can more clearly demonstrate that the legislatures which assembled under this constitution within ten years after its adoption, repeatedly recognized a turnpike built by a private corporation for the use of the public, subject to the condition of paying a lawful toll, as a public use of land, sufficiently definite and decisive in its character to call for the exercise of the legislative power, conferred or recognized by the constitution, of taking the land of individuals and applying them to those uses. See charter of 10th N. H. Turnpike, Laws of 1803; Charlestown do. do. 1803; Londonderry do. do. 1804, and numerous others about the same period; most of which provide that the superior court or court of common pleas may, in case of disagreement between the corporation and the landowner, appoint a committee to assess the compensation to be paid by the former, and issue execution for the same. We do not advert to this practical construction given to the constitution by the men who framed it, and their contemporaries, ***63** the authors of the public opinion which gave it its true and effective origin, indicating the public wants and the general means by which they should be accomplished through a form of government, as decisive of the question as to its meaning. But unless we are bound to consider all question on the subject as put to rest by the plain letter of the instrument, and to deny that there is room for doubt, then evidence of contemporaneous construction may, by the principles of law, and by the obvious maxims of sound reason, be adduced as evidence of its meaning and design. For laws are founded, in general, upon the perception of an evil, or a danger, or of a public want, and are often framed with such express reference to it as to leave a latent ambiguity in their expressions, easily solved by those who shared in the

perceptions of the framers of the laws, but not apparent to after generations, who have lost, by the lapse of time, that key to the interpretation. Thus, if a reasonable doubt arise upon the words of a statute, whether a certain thing is embraced within its prohibition, evidence of the prevailing use or practice of that thing immediately after the passage of the statute, by the framers of it and the public in general, goes far to establish the proposition that it is not so included.

****9** We have endeavored thus far to state the reasons which have occurred to us, why a charter of this description should not be held to be repugnant to the constitution. We are satisfied with the result to which these reasons lead us, without advertent to decisions which have been made upon the same or analogous questions in other States of the Union. But these all concur to sanction and confirm our opinion, by the reasons upon which they are based, and the authority of the tribunals which have announced them. *Beekman v. Sar. & Schen. R. R.*, 3 Paige C. R. 45; *Gardner v. Newburg*, 2 Johns. Ch. Rep. 162; *Scudder v. Trenton Delaware Falls Co.*, Saxt. 694; ***64** *Bonaparte v. Camden & Amb. R. R.*, Baldw. 204; *Bloodgood v. Mohawk & Hudson R. R.*, 18 Wend. 9.

The legislature is the sole judge of the expediency of taking private property for public uses, within the limits of the constitution. *Varick v. Smith*, 5 Paige C. R. 137.

As to the question which arises under the constitution of the United States, providing, "nor shall private property be taken for public use without just compensation," we think that if the facts were wanting here, which take the case out of that clause in the fifth article of the amendment, the intention of the article itself was wholly foreign, and inapplicable to a case arising under a State law. The constitution of the United States was an act of the people to establish a general government. It assumes to invest its several departments with their appropriate powers, legislative, executive and judicial. And, although it pursues in so doing the strict plan of specifying these powers, and the cases in which they may lawfully be exercised, yet these grants of power are of necessity couched in general phrase, and their exercise is further guarded by general rules, of which a considerable number are contained in the articles of amendment. It was no part of the design of these articles, or of the constitution in any of its parts, to impose any restraint upon the government of the States, except just so far as to bring and to retain their action in harmony with that of the federal power. For no other purpose does a State admit the authority of that instrument, or the federal compact to control her, in the exercise of the

ordinary functions of a State. *Bradshaw v. Rogers*, 20 Johns. 103-106.

Of the remaining exceptions, the ninth relates to matters that have been fully considered in this opinion. That the act incorporating this company is in some sense a private act, has been shown not necessarily to affect the real question raised; that is, whether the purposes for which the land is taken are such as justify the act.

***65** The 4th, 5th, 6th, 8th, 11th, 12th, 13th, 14th and 19th relate to matters which are fully answered by denial, or by the setting up of matter in avoidance in the answers to those exceptions filed by the petitioners, and which are confessed by the general demurrer raising an issue of law. The case, we think, requires nothing more than this general reference to these answers. The 20th is a general exception, under which nothing is specified.

****10** By the 15th, 16th, 17th and 18th, objection is taken to the course pursued by the committee in amending their report, in some particulars, without notice to the defendant, and assessing the damages at a meeting not notified to him. But these amendments, to the extent that they were made, appear to have been made under the directions of the court, or at the court's suggestion, and all before the expiration of the term at which the report was returned.

As to the tenth exception, it has been held in cases before road commissioners that the appearance of the party was a waiver of all irregularity in the notice, upon grounds which are undoubtedly applicable here. *Parrish v. Gilmanton*, 11 N. H. Rep. 293.

The statute of December 23, 1840, referred to in the 7th exception, clearly has no reference to railroad corporations which had not taken the lands prior to the period referred to in the act. Its object was to provide a particular remedy, to apply to particular evils therein contemplated.

The result, therefore, is that none of the objections which have been taken can prevail, and that the report must be accepted.

Report accepted.

All Citations

17 N.H. 47, 1845 WL 2063

Footnotes

a1 PARKER, C. J., did not sit.

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2013 NHLSA Case Studies Seminar

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SEPTEMBER 19, 2013

“History of the Old Railroad Right-of-Way Statutes”

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HILLSBOROUGH, SS.
NORTHERN DISTRICT

APRIL TERM, 1993

SUPERIOR COURT

Boston & Maine Corporation
v.
Charles P. O'Leary, Jr.,
Commissioner, Department of Transportation
92-E-00102; 92-E-00142

State of New Hampshire
Department of Transportation
v.
Boston and Maine
c/o Guilford Transportation Industries
92-E-00207, 92-E-00034-B, 92-E-00162,
92-E-00171-B, 92-E-051

MEMORANDUM OF LAW IN SUPPORT OF
STATE'S MOTION FOR SUMMARY JUDGMENT

I. SUMMARY OF ARGUMENT

These consolidated cases are all founded on the State of New Hampshire's claim to fee simple ownership of three railroad corridors - a claim disputed by the Boston and Maine Corporation (B&M). The State's claim rests on several discrete series of events:

A. The layout, construction, and leasing of the three rail lines during the period 1844-1863, pursuant to Chapter 128 of the Laws of 1844. We will argue that this statutory procedure resulted in the acquisition by the State of a railroad right-of-way, or easement, over the entire length of all three corridors. These easements were then leased to various railroad corporations - all predecessors of B&M.

This part of the argument is based on the language and legislative history of the 1844 law and its amendments, on the historical circumstances surrounding the law's enactment, on the case of Blake v. Rich, 34 N.H. 282 (1856), which construed the law (and specifically the procedures by which landowners were paid), and on the layout reports, leases, and other documents which were executed pursuant to the procedures set out in the law.

B. The failure by B&M to renew the leases on two of the three lines, when those leases expired in the 1940's, 50's, and 60's.

C. The termination of the lease on the Northern Line due to B&M's failure to maintain the line in operating condition, as required by the 1844 law. This failure commenced with the cessation of operations on 90% of the line in the 1970's.

D. The enactment of Chapter 228 of the Laws of 1991, codified at RSA 228:60-a, V, which converted the State's easement interest in the three lines (among others) into a fee simple interest, while providing a mechanism for compensation to any party whose rights were extinguished thereby.

The State contends that these events have resulted in State ownership of the three lines in fee simple, and that B&M owns no interest whatever in any of the lines. Because the claims in B&M's two suits against Commissioner O'Leary are predicated on the absence of title in the State, the claims in those two actions have no factual or legal basis and must be rejected.

This memorandum will also discuss the following:

A) The legal status of the deeds through which B&M claims ownership of most of each of the three corridors. All but a handful of these deeds were obtained after the corridors were laid out. It is the State's position that all such deeds are invalid because (1) they were obtained as a direct consequence of the eminent domain procedure in the 1844 statute, which did not authorize their execution; (2) an 1840 statute prohibited railroad companies from acquiring property by eminent domain; and (3) under the statute, most of the money ostensibly paid for the deeds was actually being paid on behalf of the State, to purchase an easement for the State. (Insofar as some of the deeds also convey property outside the corridors, the State does not contest their validity for that purpose.)

An analysis of the 1844 law indicates that, where part of a corridor was laid out through property already owned by a railroad company, the State acquired an easement which was then leased back to the company.

B) The causes and consequences of the fact that, many decades after the law's repeal in 1867, both the State and B&M forgot about the implications of the 1844 statute. The consequences included acts by both parties in the 1970's and 80's which were inconsistent with the actual legal status of some of the lines laid out under that law. Such acts could not affect the status of the State's title to the property claimed in this action.

C) B&M's asserted defenses of laches, estoppel, waiver, and adverse possession, all of which are barred, either by case law or by statute, in an action involving the State's title to real estate.

Foreman

II. STATEMENT OF FACTS AND ARGUMENT

A. The Anti-Railroad Movement

(The historical facts cited in this memorandum are taken partly from the public record, and partly from the book Jacksonian Democracy in New Hampshire, by Donald Cole (1971 - hereafter "Cole"), together with materials cited in Professor Cole's footnotes. Excerpts from the book are attached to this memorandum - Exhibit 1-g.)

The first railroad in America was built in Quincy, Massachusetts in 1827. By the late 1830's, New England had many railroads. In New Hampshire, each railroad had been chartered by a special act of the legislature, which gave a railroad company the right to acquire a right-of-way by eminent domain, to build a line, and to operate it.

In 1840, however, the State legislature was dominated by a faction of the Democratic party which opposed any State assistance in the building of more railroads. The faction was part of a broader movement which supported farmers against what it viewed as the exploitative activities of banks, factories, and railroads. See generally Cole, pp. 186-211.

Chapter 498 of the Laws of 1840 (See Exhibit 2), enacted on June 20 of that year, effectively stopped railroad construction in New Hampshire, except for those lines which had already been approved. Even those lines could not be built until all land damage claims had been paid. The act repealed all previous laws regarding assessment of damages for new

railroads, and then provided

That from and after the passage of this act, it shall not be lawful for any corporation to take, use, or occupy any lands, without the consent of the owner thereof....

In November 1840, Chapter 584 (See Exhibit 3) was enacted, permitting landowners whose claims to damages had not been paid by a railroad company, to tear up the tracks, after notice and opportunity for hearing.

No more railroads were built in New Hampshire for four years. During that period, pressure built up on the legislature, both from companies desiring to build railroads, and from the growing strength of the Whig party, which tended to favor business interests over farmers. The economic depression following the Panic of 1837 had ended, and it had become clearer that railroads could be an economic plus to a state. Some legislators began to fear that the railroads would bypass New Hampshire when going from Boston to Montreal. Cole, supra.

These combined forces eventually resulted in the passage of Chapter 128 of the Laws of 1844, on December 25 of that year. (See Exhibit 4.) Its immediate purpose was to permit construction of the Northern Line from Concord to West Lebanon, thus creating the necessary link to provide service from Boston to Montreal. However, the influence of the anti-railroad faction was strong enough that the act contained extraordinary restrictions on the power of all railroad corporations that built lines under the act.

B. The 1844 Statute

The act set up a State Board of Railroad Commissioners. A company wishing to build and operate a railroad had to apply for status as a "public corporation," thus agreeing to be bound by the restrictions in Chapter 128 and its amendments. At the same time, it would submit its requested route to the Board, which could disapprove the request, or could recommend approval to the Governor and Council, which would then authorize the Board to lay out the line (either as requested or in a modified version) and assess damages.

The Board's report of the layout and its assessment of damages would be filed with the Secretary of State; they would not be recorded at the Registry of Deeds. Construction could begin on a section of the line when damages had been paid on that section.

The key to the act was Section 8, which provided that the corridor, with the right to operate a railroad on it, would be leased to the corporation by the State on written application therefor. The lease would run for one hundred to two hundred years; at expiration, "the right so leased shall revert to the State;" but the lease might be renewed, subject to the same restrictions as before, or such new ones as the legislature might impose at the time of renewal.

Section 9 provided that the corporation's cost for the lease would be equal to the total sum of damages assessed by the commissioners for the purchase of the corridor by the State.

Section 16 imposed further restrictions on the operating corporation. It said:

Such corporation shall not discontinue its road, nor neglect to keep the same in good repair ... without the consent of the legislature

Finally, Section 21 repealed "[a]ll acts and parts of acts inconsistent with the provisions of this act" It did not expressly repeal the 1840 act which prohibited corporations from taking land by eminent domain.

C. Public Debate

Before and after the bill's passage, newspaper reports and editorials focussed on the lease provision as the key to the bill. The [Concord] Patriot of December 19, 1844 stated:

Under [the act's] provisions the corporation can in no instance take the land of individuals without their consent, but if the public good require it, the right of user may be assumed by the State, and leased to the corporation upon conditions securing a clear public use.

(Emphasis in original.) (See Exhibit 1-k.) The same edition reprinted an article from the Belknap Gazette, which said that the bill

declares certain conditions upon which railroads may become public in their character and thereby acquire the right of way, which is to be taken by the State and the use granted to the corporations upon certain specific terms....

(Emphasis in original.) (See Exhibit 1-k.)

In its December 26 edition reporting the passage of the bill by the House, the Patriot, which had been anti-railroad, responded to criticism of its support of the new bill. It noted that the Democrats' aim should be to prevent exploitation by railroads without putting the government in the railroad business:

To avoid this difficulty, the State says to the company applying, if you will invest your money in this enterprise, agree to the restrictions and conditions we impose, construct the road and conduct its affairs as we prescribe, and in a word, become our agents for the purpose, assuming all the risks and encountering all the contingencies yourselves, we will allow you to have a stipulated per cent. of the income that may be derived from the undertaking, for a limited number of years.

(Exhibit 1-1.) (Emphasis in original.)

The New Hampshire Sentinel (now the Keene Sentinel) appears to have been more pro-railroad than the Patriot. (See Exhibit 1-m.) In its edition of December 25, 1844, its correspondent first provides a synopsis of the new law ("... When road is laid out, Governor and Secretary to lease the land and guaranty it to the corporation for from one hundred to two hundred years, with the right to build a railroad on the same."). He then comments that the law does indirectly what the Democrats had said could not be done:

... it would not seem to make much difference with the individual, whether the land is taken by appraisal of the County Road Commissioners, or the Railroad Commissioners, or whether the corporation acquire the use of the land directly from the owners, or indirectly from the State. It is true the State only leases the land from one hundred to two hundred years, and promise to lease longer, if required. The State does in fact give to the corporation, substantially, all the right it acquires in the land.

The correspondent then goes on to criticize the bill as over-restrictive: "The main objection to this Railroad Law, is, it occasions unnecessary expense and delay to corporators, and vests a power in the Governor and Counsel [sic] which is quite unnecessary."

(All quotes are from newspapers cited in Cole, p. 209, footnote 53.)

D. An Explanatory Amendment

The Northern Rail Road Corporation immediately applied for public corporation status, and for permission to build the Northern Line. In the ensuing months, many other companies were chartered, and sought permission to build other lines. But no lines had actually been laid out when the legislature passed Chapter 227 of the Laws of 1845, on July 3 of that year (see Exhibit 5).

This act was entitled, "AN ACT in addition to and explanatory of [Chapter 128, Laws of 1844]." Section 1 of the act made it permissible for the Board to lay out and assess damages on only part of a proposed line at a time; "... and when such corporation shall have complied with all the requirements of law in relation to such portion of the route so laid out, a lease shall be granted of such portion, in the same manner as is provided by law for the whole route when laid entire."

Another crucial part of the act is Section 3. The 1844 act had indicated that the board of commissioners would pay all assessed damages from the state treasury, which would then be fully reimbursed when the railroad corporation paid for its lease. Section 3 of the 1845 act made it clear that this was not how the system was intended to operate in practice:

Releases from land owners of the damages awarded to them, filed with the state treasurer, shall be received by him instead of the money required to be deposited on account of such land owners, and the corporation shall only be required to deposit, from time to time, with the treasurer, the damages awarded to land owners on so much of the route as shall have been laid out aforesaid, for which releases shall not be filed as aforesaid.

In other words, the assessed damages could be paid to the landowners directly by the railroad corporation, on behalf of the State. The corporation could then obtain releases from the landowners, which the treasurer could accept in lieu of cash as payment for the corporation's lease of the corridor.

E. Layout, Construction and Lease

The Board reported favorably on the proposal for the Northern Line. It was approved by the Governor and Council, and the Board laid out the line and assessed damages on November 14, 1845. The layout report is attached to the Petition to Quiet Title. Immediately thereafter, the Northern Railroad Corporation began paying the assessed damages to landowners. In some cases, it received only a release in return; but in over 200 cases, it obtained a deed from the landowner.

The vast majority of these deeds describe the land "conveyed" in this or similar language: "All the land owned by me in Boscawen which was taken for the use of the Northern Rail Road." See Exhibit 1-j, Deed of Samuel Balch. In some cases, a deed conveyed land outside the corridor as well as purporting to convey part of the corridor itself. In most cases where the deed only referred to land in the corridor, the amount of consideration recited was identical to the amount assessed by the Board; in others, it was slightly more.

At this point, it may be appropriate to note that the commissioners' assessment of damages contained the following

paragraph:

The Corporation having purchased divers tracts of land over which said road passes in the County of Merrimack and taken deeds thereof in fee simple, we and the Road Commissioners for the County of Merrimack have carefully examined those lands and are of opinion that in any question which may hereafter arise between this Corporation and this State, the Corporation should be allowed for the parts of said lands over which the road passes, the sum of two thousand eight hundred twenty-two dollars and fifty-seven cents and that the same should be considered equivalent to the payment of that sum under an assessment duly made by the commissioners.

See Petition to Quiet Title, Exhibit A.

A similar paragraph dealing with Grafton County followed. The State submits that the meaning of these paragraphs is clear: the railroad company had bought these parcels of land before the layout, and the commissioners were crediting the company with a payment in the stated amount, representing their estimate of the value of the parcels. This was necessary because the layout had resulted in the State's acquisition of an easement over those parcels; to obtain its lease, which covered the entire corridor, the company had to be credited with payment to the State of the full assessed value of all parcels constituting the corridor. If, as B&M may argue, no lease was required over parcels that the company had bought in fee simple, these paragraphs are pointless.

The corporation applied for its lease of the Northern Line in a one-page document dated "Sept. Session A.D. 1846." (See Exhibit 1-a.) The directors asked the Governor and Council

" ... to grant said Corporation a Lease of their road as laid out, or a right to construct a Rail Road over their said Route, for the public use and benefit, with the right of user in the same, to pass, and repass with their locomotives, cars and vehicles of transportation thereon, and for other usual and necessary purposes of a Rail Road for a term of time not less than two hundred years. ..."

The application is signed, "The Northern Rail Road by George W. Nesmith their Atty. &c."

The lease was executed on June 2, 1847 (see Exhibit 1-b).

In the operative language, the lease states:

... I, Anthony Colby, Governor ..., in consideration of the sum of fifty-two thousand six hundred and four 55/100 dollars by the said Northern Railroad Company deposited with James Peverly, Treasurer of this State, before the delivery hereof, being a sum equal to the whole amount of damages assessed by the Rail Road Commissioners for the land over which the said railroad passes and said company having also deposited with the said Treasurer in money, and releases of damages of all lands specified in said report do hereby lease and guaranty to said corporation for the term of two hundred years, the right to construct a railroad for the public use and benefit with the right of user in the same to pass and repass with their locomotives, cars and vehicles of transportation thereon, and for other usual and necessary purposes of a railroad upon all that tract of land situate within the bounds hereinafter described to wit ...

There follows a description of the entire line, with reference to the layout report filed by the board of commissioners. The lease is made subject to the 1844 act and its amendments, and to the act chartering the Northern as a public corporation, and will run for two hundred years " ... upon the condition that said corporation complies with the requirements contained in said acts or any subsequent acts relating to their railroad"

The line was duly built, and operations began in 1848.

The line was complete by 1849.

Commercial railroad operations on the Northern ceased in the late 1970's. The Interstate Commerce Commission approved the abandonment and discontinuance of railroad service by the Boston & Maine Corporation and its wholly-owned subsidiary, the Northern Railroad over a 59.32 mile section of the Northern Line on December 2, 1991. See Exhibit 1-c. The State notified B&M on November 5, 1991 that it considered the lease to have been terminated by B&M's abandonment of railroad service on the line. Exhibit 1-e.

F. The Hillsborough and Manchester-Lawrence Lines

Events on the other two lines involved in this action followed a pattern virtually identical to that on the Northern, with some minor exceptions. The Hillsborough Branch was laid out by the Wilton Railroad Company in three sections, and was leased in three parts, with 100-year leases dated August 9, 1847; May 15, 1850; and June 12, 1863. (See Exhibit 1-f.) The 100-year lease for the Manchester-Lawrence Line was applied for and granted on November 22, 1848 (See Exhibit 1-e.)

In both cases, the railroad corporation paid the assessed damages, and obtained releases for some properties and deeds for others. Some of the deeds incorporated property outside the corridors. On both lines, the leases described the entire extent of the line, and recited that the sum paid for the lease was equal to the entire amount of damages assessed by the commissioners. All of these leases expired by the own terms.

G. Blake v. Rich

Other lines were also built under the 1844 law, among them the Atlantic and St. Lawrence, across Coos County. In 1856, the New Hampshire Supreme Court ruled on a dispute between an agent of the railroad company, and a citizen of Northumberland, through whose land the rail corridor had been laid out. The dispute concerned timber, which had been cut in the corridor by the corporation's agent; the issue was " ... the nature and extent of the interest which a railroad corporation acquires in the land laid out by the railroad commissioners for their road" Blake v. Rich, 34 N.H. 282, 283 (1856).

The Court acknowledged that "... the railroad corporation ... had paid the plaintiff the damages awarded him for the laying out of their railroad through his land" Id. But it affirmed that the timber still belonged to the landowner-plaintiff.

The Court first held that the layout could not have resulted in the taking of any interest greater than an easement, by analogizing to the laws for laying out highways. Id. at 284-86. It then performed a detailed analysis of the 1844 law and its amendments, noting:

In those sections defining the terms and conditions of the lease executed to the corporation by the State, the nature and extent of the interest acquired in the land by the laying out of the road, and the payment to the landowners of the damages assessed, are very distinctly indicated. The land damages are paid by or for the State, and whatever is acquired by the whole proceedings first vests in the State.

Id. at 287 (emphasis added). The Court concluded that, under

the statute, the corporation's interest in the land was a leasehold interest in a railroad easement owned by the State, and that such an easement did not incorporate the right to cut trees, unless they interfered with operation of the line. Id. at 287-89.

H. Interpretation

The State submits that only one reasonable conclusion can be drawn from the statutes, documents, and case law discussed above: after the layout of these three lines, and the execution of the leases, the State owned a railroad easement over the entire length of each line, and the various railroad companies owned leasehold interests in those easements.

This conclusion follows, first, from the language of the 1844 and 1845 statutes. In construing that language, the court must apply two basic rules of statutory construction.

(1) "... the intent of a statute is determined from its construction as a whole and not by separate construction of isolated words and phrases." State v. Smith, 124 N.H. 509, 512 (1984).

(2) "... the legislature should not be presumed to do an 'idle and meaningless act' [citation omitted], nor one which would lead to an absurd result." State v. Woodman, 114 N.H. 497, 500 (1974).

The 1844 act, and the "explanatory" 1845 act, taken together, simply cannot be reconciled with B&M's apparent position in this case, to wit: that the legislature intended to lease to the railroad companies only those portions of each line that the company could not get a deed for, either before or after the layout. In particular, Section 1 of the 1845 act indicates that, when a route is laid out in its entirety, a

lease will be executed "for the whole route;" no exceptions are mentioned.

More importantly, the whole notion of a lease for a railroad line is meaningless if the lease does not incorporate the entire line. When the State owns the entire line, and the corporation violates the terms of its lease, the State may terminate the lease and grant a new lease to another company, thus ensuring that the interruption of rail service is minimized. (The court may note that this act was passed half a century before the invention of the automobile, when the railroad was the only means of transportation faster than a stagecoach, and was becoming vital to the economy of the region.)

But if the State owns only portions of the line, termination of the lease will only stop the original company from operating - something that could be done just as easily by a simple regulation. Rail service would stop, and the economy would suffer, until either the original lease was reinstated, or the State acquired the parts of the corridor owned by the company in a new eminent domain proceeding, and then executed a lease to a second company - a long, tedious, and expensive procedure. This would indeed be an absurd result, since it would give the corporation a lever with which to blackmail the State - a concept totally at odds with the enormous regulatory powers given to the State in the 1844 act as a whole.

The State's argument relies, secondly, on the legislative history of the acts, and the circumstances under which they were passed. State v. Railroad, 76 N.H. 146, 149 (1911). The 1840 act had forbidden corporations to "take, use, or occupy" land

without the owner's consent. The 1844 act indicated that corporations may use and occupy land under a lease, but the taking of land was still reserved to the State. Thus, the prohibition on taking of land by a corporation was still in force.

The acts of the corporations in obtaining deeds after the layouts, paid for in whole or in part with money designated by law as payment for the State's easement, were an attempt to take land, and the deeds so obtained must be held invalid, insofar as they involve land inside the railroad corridor, both for failure of consideration and because there was no legal authority for their execution. See Gutensohn v. McGuirt, 147 P.2d 777, 781 (Okla. 1944); ("There was no specific grant of authority for the railroad company in any case to acquire fee simple title to the land it proposed to use as a right-of-way It therefore appears that ... [the deed to the railroad company], in so far as it purports to convey fee simple title, was a nullity."); see also State v. Union Elec. Co. of Missouri, 148 S.W.2d 503, 506 (Mo. 1941); Peterson v. City of Reno, 436 P.2d 417, 419-20 (Nev. 1968).

Finally, our argument rests on the admissions of the railroad companies themselves. By applying for leases over the whole length of each corridor, and not just over the portions they had failed to "acquire" by deed, and then by accepting leases phrased in the same terms, they admitted that the State owned an easement over the whole corridor. It is illogical to suppose that an attorney such as Mr. Nesmith would allow a client such as the Northern Rail Road Corporation to apply for a

what about
outside
corridor?

lease over land which his client owned in fee simple, unless that land was encumbered by an easement owned by the State.

* B&M is expected to argue that, where its predecessors owned land in the corridor before the layout, the acquisition of an easement over that land by the State was not sufficiently compensated, since all the company got in return was a leaseback.

This argument fails for two reasons. First, in such cases the easement was not taken by the State. The whole statutory procedure was initiated by the railroad company. When it applied for status as a public corporation and requested the Board to lay out a route, it agreed to convey to the State an easement over any previously-owned land, as one of the conditions and restrictions laid out in that procedure. This is the clear intent of the statute construed as a whole, and is also demonstrated by the commissioners' language cited above in the assessment of damages on the Northern Line.

Second, the company received much more than just a lease of land under the statute. As long as it complied with the statute's requirements, it received an exclusive franchise to operate a railroad for a virtually indefinite period of time - an asset of enormous value. The company was amply rewarded for its small sacrifice.

B&M is also expected to argue that the State could not have acquired any land on any of the lines, since all the money paid to landowners came, not from the State treasury, but from the railroad corporations. This argument is answered completely by the language of the 1845 act, as construed by the Supreme Court in Blake v. Rich, supra. By agreeing to the procedures in

the statutes, the corporation agreed to act as the State's agent in the paying of compensation, for which it was reimbursed by the granting of the lease, together with the railroad franchise.

I. Repeal and Forgetting

In 1867, the laws of New Hampshire were all repealed, and replaced with a new codification called the General Statutes. Among many other changes, the 1844 and 1845 acts disappeared, and were replaced by a new chapter permitting chartered railroad corporations to take land. General Statutes, Chapter 146 (1867). It is noteworthy that the new law contained a provision which had not been present in any previous railroad legislation:

X Sec. 9. The grantees of such railroad, either before or after such location, may obtain deeds or bonds for deeds of any lands which they deem necessary for their road, or of the right of way over the same.

The inclusion of such a clause implies a belief by the legislature that no such authority had existed under the 1844-45 statute.

It is a matter of common knowledge that the railroads were extremely successful during the second half of the nineteenth century. The national rail network grew to such an extent that, in 1887, Congress passed the Interstate Commerce Act. This created an Interstate Commerce Commission (ICC), which assumed regulatory control over all railroads and other carriers engaged in interstate commerce.

Beginning around the turn of the century, the Boston and Maine Corporation (now a subsidiary of Guilford Transportation Industries) acquired ownership of the corporations which had

originally leased the three lines involved in this case. It also acquired many lines which had not been laid out under the 1844-45 statute. Over the course of many generations, the distinctions among these lines, as to the precise status of their ownership, were gradually forgotten. There were several reasons for this.

The existence of the ICC meant that state governments had little interest in the status or operation of railroads, and virtually no control over them. Few officials in State government had any duties that would require them to take an interest in the status of ownership of railroad corridors. Until the surge in automobile ownership beginning in the 1910's, railroads were generally considered a permanent fixture on the landscape - the idea that some might be abandoned, or that the ownership of their corridors might become a legal issue, was far from most people's minds.

As noted above, the layout reports of the commissioners were not required to be recorded in the Registry of Deeds. A title searcher unaware of the 1844-45 statutes might easily conclude that the deeds to various railroad corporations, obtained after the layouts and recorded by the corporation, were valid and conveyed an unencumbered fee simple title.

B&M certainly seems to have forgotten that some of its lines were laid out under the 1844-45 statutes. In 1947, 1948, 1950, and 1963, the leases on the Hillsborough Branch and the Manchester-Lawrence line all expired, without any attempt by B&M to obtain their renewal. Since the State also seems to have forgotten the status of those lines, and took no action against

B&M, B&M acquired the status of a holdover tenant, liable for the reasonable value of its continuing occupancy of the corridors. Muse v. Merrimack Valley Nat'l Bank, 114 N.H. 700, 702-03 (1974).

In the 1970's, B&M ceased to provide service on most of the Northern Line, and allowed it to fall into disrepair (See Exhibit 1-d.) This violated the terms of the 1844 law, which required approval of the legislature before any such action. Since the lease of the line was conditioned on compliance with the law, the lease was terminated.

The disappearance of the 1844-45 law from the State's collective memory became nearly complete in the 1970's and 80's, when the State agreed to purchase B&M's ownership interest (if any - there were no warranties at all in any of the deeds) in part of the Manchester-Lawrence line, and in the Concord-Lincoln line, which had also been laid out under that law.

B&M may argue that the State is estopped by these acts from asserting ownership to other lines laid out under the 1844-45 law. B&M has also asserted defenses of waiver, laches, and adverse possession in response to the State's Petition to Quiet Title. All of these defenses fail as a matter of law:

"Since the State's rights in land and waters are not always enforced and protected with the same alacrity as private rights ... the Legislature has provided that no person can acquire title to State lands by adverse possession. R.L. c 411, 6 [now RSA 539:6]. For the same reason it has been decided that the State does not forfeit or lose its rights to public lands and waters by laches, estoppel, or waiver." State v. Stafford Company, 99 N.H. 92, 97, 105 A.2d 569, 573 (1954).

Moultonboro v. Crumb, 114 N.H. 26, 28 (1974) (brackets in original). B&M has cited no authority, and the State is aware of none, that would except this case from the operation of these longstanding general rules. Indeed, privately owned railroad property is similarly exempt from adverse possession claims.

See RSA 367:45.

J. The Railroad Preservation Statutes

Beginning in the 1980's the legislature began to be concerned with the disappearance of railroad rights-of way in New Hampshire. The result was the enactment of statutes which gave the State progressively more authority to ensure that railroad corridors would be preserved. See RSA 228:54 et seq. RSA 228:60-c authorizes the Commissioner of Transportation to enter into railroad right-of-way preservation agreements. RSA 228:60-b requires that all rail properties be offered for sale to the State in the first instance, and gives the State the option to match any verifiable bona fide offer made on any rail properties. RSA 228:60-a, I authorizes the Commissioner of Transportation to condemn railroad property if unable to acquire it by purchase or otherwise.

RSA 228:60-a, V provides in part:

All railroad rights-of-way and real properties acquired by the Commissioner or by the State are hereby declared to be owned in fee simple absolute. Any and all reversionary rights in railroad rights-of-way and rail properties which have been acquired by the State or are acquired by the Commissioner by purchase, condemnation or otherwise are hereby declared extinguished as of June 18, 1991, or the date of acquisition, whichever ever occurs later. The Commissioner shall give notice to the public of all such properties ... any person damaged thereby may make claim by petition against the Commissioner to the appropriate superior court within five years of the date of acquisition or declaration of fee simple absolute

ownership. The petition shall be referred to the Board of Tax and Land Appeals which shall proceed as with a condemnation under RSA 498-A.

(Emphasis added.)

The purpose and effect of this statute was to convert the State's railroad "rights-of-way" to fee simple ownership, as of June 18, 1991, or the date of acquisition whichever occurred later. The Northern, Hillsborough and Manchester-Lawrence lines where all laid out by the State Railroad Commissioners in the mid 1800's. Assuming, arguendo, that the B&M's deeds to properties along these lines were valid, all of its property interests were extinguished on June 18, 1991 by operation of RSA 228:60-a, V. B&M, of course retained its right to seek compensation pursuant to the statute.

III. CONCLUSION

There is no dispute about any fact material to the outcome of the State's Petition to Quiet Title. The Northern, Hillsborough, and Manchester-Lawrence railroad lines were laid out pursuant to Chapter 128, Law of 1844, as amended by which the State of New Hampshire acquired ownership of a railroad easement that was subsequently leased to various railroad corporations. None of these leases is currently valid. The State terminated the Northern lease in 1991 following B&M's abandonment and discontinuance of railroad service. The leases on the Hillsborough and Manchester-Lawrence railroads expired by their own terms in the 1940's, 50's and 60's.

B&M's predecessor railroad corporations were not authorized by law to take land for railroad purposes and, therefore, any deeds purporting to convey property to a railroad corporation within the subject railroad corridors were invalid.

In any event, the property interests underlying the State's railroad easements, whether owned by B&M's predecessor railroad corporations or the original landowners, were extinguished by operation of law pursuant to RSA 228:60-a, V.

In light of the above, the State of New Hampshire, as a matter of undisputed material fact and applicable law, is the owner in fee simple absolute of the Northern, Hillsborough, and Manchester-Lawrence Branch railroad properties, and accordingly requests summary judgment in its favor declaring such ownership.

on the Petition to Quiet Title. Further, Charles P. O'Leary is entitled to judgment in his favor on the causes of action against him.

Respectfully submitted,

THE STATE OF NEW HAMPSHIRE

By its attorneys,

Jeffrey R. Howard
Attorney General

Date: August 2, 1993



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Assistant Attorney General
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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing State's Motion for Summary Judgment has on this 2nd day of August, 1993, been mailed postage prepaid to James Q. Shirley, Esquire.



Nicholas Cort
Assistant Attorney General

SETTLEMENT AGREEMENT

AGREEMENT made as of this 6th day of January, 1994 by and among the Boston and Maine Corporation, a Delaware Corporation with its principal place of business at Iron Horse Park, North Billerica, Massachusetts 01862 (hereinafter referred to as "B&M"), the Maine Central Railroad Company, a Maine Corporation with its principal place of business at Iron Horse Park, North Billerica, Massachusetts 01862 (hereinafter referred to as "MeC"), and the State of New Hampshire, Department of Transportation, with its usual place of business at John O. Morton Building, P. O. Box 483, Concord, New Hampshire 03301-0483 (hereinafter referred to as the "State").

WITNESSETH:

WHEREAS, B&M and the State are opposing litigants in the following cases in the New Hampshire Superior Court relating to ownership of certain railroad lines known as the Northern Railroad, Hillsboro Branch and Manchester and Lawrence Branch:

- (1) Hillsborough North No. 92-E-102;
- (2) Hillsborough North No. 92-E-142;
- (3) Hillsborough North No. 92-E-207;
- (4) Hillsborough South No. 92-E-034;
- (5) Rockingham No. 92-E-162;
- (6) Merrimack No. 92-E-171; and
- (7) Grafton No. 92-E-051;

WHEREAS, B&M claims fee simple ownership of certain portions of the following named railroad lines, among others: the Ashuelot Branch, the Cheshire Branch, the Northern Railroad, the Hillsboro Branch, the Manchester and Lawrence Branch, the Portsmouth Branch, the White Mountain Branch, the Conway Branch, the Lakeport Branch, the Fort Hill Branch, the Gonic Branch, the Hollis Branch, the Blackmount Branch, the Cochecho Branch, the Concord and Claremont Branch, the Goffstown Branch, the Hopkinton Branch and the Greenville Branch all located in the State of New Hampshire (the "Rights-of-Way");

WHEREAS, the State claims fee simple ownership of certain of these same Rights-of-Way pursuant to their original layouts and pursuant to NH RSA 228:60-a(V);

WHEREAS, the parties are desirous of settling the above-referenced litigation and resolving all issues of title, as between the State and B&M, in and to the Rights-of-Way; and

WHEREAS, B&M's affiliate, MeC, owns in fee simple certain portions of a railroad line known as the Mountain Division and Quebec Junction and desires to convey the non-operating portions of said railroad line which are located within the State of New Hampshire to the State and the State desires to purchase the same from MeC.

NOW THEREFORE, in consideration of the promises, covenants, terms, and conditions contained herein, the parties agree as follows:

1. Railroad Lines Subject to this Agreement. The following railroad lines are subject to this Agreement:

- A. Non-Operating Lines: the non-operating portions of the Ashuelot Branch, the Cheshire Branch, the Northern Railroad, the Mountain Division (hereinafter including Quebec Junction), the Fort Hill Branch, the Gonic Branch and the Lakeport Branch (hereinafter, the "Non-Operating Lines"). All of the Non-Operating Lines are more fully described in Exhibit A, annexed hereto and made a part hereof, and are shown on the Valuation Plans indicated by red outline on said Plans. Duplicate sets of said Plans have been initialled for identification by B&M and by the State, contemporaneously with the execution of this Agreement, and are delivered herewith.
- B. Operating Lines: the operating portions of the Hillsboro Branch, the Northern Railroad, the Mountain Division, the White Mountain Branch, the Conway Branch, the Lakeport Branch, the Manchester and Lawrence Branch, the Portsmouth Branch, the Concord and Claremont Branch, and the Hollis Branch (hereinafter, the "Operating Lines"). The Operating Lines do not include those parcels previously conveyed to the state for highway or other public purposes. All of the Operating Lines are more fully described in Exhibit B, annexed hereto and made a part hereof, and are shown on the Valuation Plans indicated by yellow outline on said Plans. Duplicate sets of said Plans have been initialled for identification by B&M and by the State, contemporaneously with the execution of this Agreement, and are delivered herewith.
- C. Abandoned Lines: the abandoned portions of the Hollis Branch, Blackmount Branch, Cochecho Branch, Concord and Claremont Branch, Goffstown Branch, Hopkinton Branch, and Greenville Branch. All of the Abandoned Lines are more fully described in Exhibit C, annexed hereto and made a part hereof.

Applicable 2. Conveyance of Non-Operating Lines. B&M shall acknowledge, by execution of deeds without covenants running to the State to be recorded in the appropriate Registries of Deeds, the State's acquisition by virtue of RSA 228:60-a(V), all of B&M's right, title and interest in and to the Non-Operating Lines, except the Gonic Branch and Fort Hill Branch and Mountain Division, certain portions of which B&M and MeC, respectively, shall separately convey to the State by release deed without

covenants. In consideration of the settlement of this litigation, the conveyance of certain portions of the Gonic Branch and Fort Hill Branch and the Mountain Division, and the extinguishment of B&M's claims to the Non-Operating Lines, and in payment of just compensation pursuant to RSA 228:60-a(V), the State shall pay to B&M and MeC the total sum of Seven Million Four Hundred Thousand and 00/100 Dollars (\$7,400,000.00), (hereinafter, the "Just Compensation Payment").

3. Conveyance of Operating Lines. Contingent on the State's receipt of the necessary approvals, the State shall convey to B&M by release deed without covenants all of its right, title, and interest in and to the Operating Lines.

In consideration of the conveyance of the State's fee simple interest in and to the Operating Lines, the State shall receive a credit against the Just Compensation Payment of One Million Five Hundred Thousand and 00/100 Dollars (\$1,500,000.00) for a net compensation due to B&M in the amount of Five Million Nine Hundred Thousand and 00/100 Dollars (\$5,900,000.00) (hereinafter, the "Net Compensation").

4. Transfer of Interests: Closings.

A. Closing I. The first closing under this Agreement (hereinafter, "Closing I") shall take place the earlier of either (i) within thirty (30) days of the State's receipt of all required approvals or (ii) September 30, 1994. It is agreed that time is of the essence of this Agreement. At Closing I, B&M shall convey to the State all of its right, title and interest in and to the Gonic Branch, the Fort Hill Branch, and the Lakeport Branch. At Closing I, MeC shall convey to the State all of MeC's right, title and interest in and to the non-operating portion of the Mountain Division located in the State of New Hampshire, including all rail and other track material located thereon from the Intervale switch north. Rail and other track materials from the Intervale switch to the New Hampshire/Maine state line shall remain the property of MeC, and MeC shall be entitled to remove the same. Upon completion of said conveyances at Closing I, the State shall pay to B&M Two Million Nine Hundred Fifty Thousand Dollars (\$2,950,000.00), by check drawn upon the State of New Hampshire, such sum being one-half of the Net Compensation. At Closing I the State shall also convey to B&M the State's fee simple interest in and to the Operating Lines.

B. Closing II. On or before September 29, 1995 (hereinafter, "Closing II") B&M shall convey to the State all of its right, title and interest in and to the Northern Railroad, the Cheshire Branch, and the Ashuelot Branch. It is agreed that time is of the

essence of this Agreement. Upon completion of said conveyances at Closing II, the State shall pay to B&M Two Million Nine Hundred Fifty Thousand and 00/100 Dollars (\$2,950,000.00) by check drawn upon the State of New Hampshire, such sum being the final payment of the Net Compensation.

5. Pro-ration of Rents, Etc. All rents, water and sewer fees (if any), and taxes shall be pro-rated as of the date of delivery of the deeds.

6. Title to Abandoned Lines. The State and B&M agree that the railroad easements laid out under Ch. 128 of Laws of 1844 have been extinguished on the Abandoned Lines by operation of law due to their legal abandonment for railroad purposes. The State acknowledges that it has no claim of title to the Abandoned Lines under RSA 228:60-a(V).

7. Acknowledgements, Waivers and Releases.

A. Operating Lines. The State acknowledges that B&M has, prior to and during the period from June 18, 1991 (the effective date of the amendments to RSA 228:60-a(V)) to the date of Closing I, by contract or otherwise, granted certain property rights in and to the Operating Lines to third parties. The State hereby waives and releases any claim against B&M or any third party grantee or assignee of B&M for any payments received by or payable to B&M prior to or from June 18, 1991 to the date of Closing I.

B. The Northern Railroad. The State acknowledges that B&M has entered into a certain Fiber Optic Easement Agreement dated August 27, 1987 with AT&T relating to the installation and operation of communications transmission systems in, on, upon, over, under, across, along or through B&M's rail corridor between Manchester, New Hampshire and White River Junction, Vermont, which rail corridor includes the Northern Railroad, v.s. 32.1, Maps 9-67 (hereinafter, the "Northern Fiber Optics Agreement").

B&M has provided the State with copies of the Northern Fiber Optics Agreement, any amendments thereto, and any assignments thereof, including a certain Sale Agreement dated as of January 1, 1988 between B&M and Portland Terminal Company (as sellers) and Peoples Security Life Insurance Company ("Peoples") and Commonwealth Life Insurance Company ("Commonwealth") (as buyers).

The State has reviewed such documents and hereby waives and releases any claims against B&M pursuant to the Northern Fiber Optics Agreement, and any claims against Peoples or Commonwealth for payments made by AT&T to Peoples or Commonwealth.

The State recognizes the validity of AT&T's easement interest which it acquired from B&M pursuant to the Northern Fiber Optics Agreement and waives and releases any claims against AT&T relating to said easement.

8. Covenants of the State. Subject to B&M's full performance of its obligations contained in this Agreement, the State covenants and agrees as follows:

- A. The Abandoned Lines, the Non-Operating Lines (except the Fort Hill Branch and Gonic Branch and the Mountain Division) and the Operating Lines which are the subject of this Agreement are the only railroad lines owned or operated by B&M or Springfield Terminal which were laid out under the Act of December 25, 1844 (Chapter 128), as amended; and

B. Neither the terms of this Agreement nor the provisions of New Hampshire RSA 228:60-a(V) affect B&M's title to any railroad lines which are not subject hereto.

Any claims brought against B&M within the period allowed by RSA 228:60-a(V) by third-party reversionary interest holders relating to any taking effected by the State under said statute shall be the responsibility of the State.

9. Covenants of B&M. Subject to the State's full performance of its obligations contained in this Agreement, B&M covenants and agrees as follows:

- A. With respect to the Abandoned Lines, the Operating Lines, and the Non-Operating Lines (except the Fort Hill Branch and Gonic Branch and the Mountain Division) which are the subject of this Agreement, B&M waives any and all rights it may have to make a claim for damages pursuant to RSA 228:60-a(V), and the payment provisions of this Agreement are in lieu of any such claims; and

- B. With respect to the Abandoned Lines, the Operating Lines and the Non-Operating Lines, B&M agrees not to challenge the validity of RSA 228:60-a(V).

10. Consent Decrees. Within thirty (30) days after Closing II, and provided that B&M and the State have met all of their respective obligations hereunder, the parties shall execute a court-approved Consent Decree for filing in each of the following actions currently pending in the New Hampshire Superior Court:

- (1) Hillsborough County North, No. 92-E-102;
- (2) Hillsborough County North, No. 92-E-207;

- (3) Hillsborough County North, No. 92-E-142;
- (4) Hillsborough County South, No. 92-E-34;
- (5) Rockingham County, No. 92-E-163;
- (6) Merrimack County, No. 92-E-171; and
- (7) Grafton County, No. 92-E-051.

Said Consent Decrees shall be substantially in the form of Exhibit D, annexed hereto and made a part hereof.

11. Survival of Covenants. The covenants of the State and B&M set forth in Sections 8 and 9, above, shall survive the delivery of deeds and filing of consent decrees contemplated by this Agreement and shall continue to bind the State and B&M, its successors and assigns.

12. Contingencies. This Agreement is contingent upon (1) the State's receipt of all approvals required by law, (2) the approval of the Governor and Council of the State of New Hampshire, and (3) upon the State's obtaining federal funding pursuant to the federal Intermodal Surface Transportation Efficiency Act of 1991, or other applicable federal funding legislation.

13. Notices. Any notice or other communication contemplated by or in connection with this Agreement shall be deemed to have been given when made in writing and mailed to the parties, by registered or certified mail with the United States Postal Service, at their addresses as set forth below or at such other address as may hereafter be designated by notice:

If to B&M: Leonard Lucas, Vice President Real Estate
Guilford Transportation Industries, Inc.
402 Amherst Street - Suite 300
Nashua, New Hampshire 03063-1287

With a copy to: James Q. Shirley, Esq.
Sheehan Phinney Bass + Green, P.A.
P.O. Box 3701
Manchester, NH 03105-3701

If to the
State: William H. Carpenter
Administrator, Bureau of Railroads
Department of Transportation
P. O. Box 483
Concord, NH 03301-0483

With a copy to: Michael Walls, Esq.
Senior Assistant Attorney General
Office of the Attorney General
25 Capitol Street
Concord, NH 03301

14. Default: Remedy. In the event that either party, at or prior to either Closing I or Closing II fails to perform such

party's obligations hereunder, the party claiming default shall have the right, in addition to pursuing any other remedy in law or equity, to activate the pending litigation and seek the relief requested therein from the Hillsborough County Superior Court.

15. Binding Effect. This Agreement shall be binding upon the parties hereto, their assigns and successors in interest.

16. Governing Law. This Agreement shall be governed by the laws of the State of New Hampshire as such laws are applied to agreements between New Hampshire residents entered into and to be performed within the State of New Hampshire.

17. No Third Party Beneficiaries. With the exception of those third parties explicitly referenced in Section 6(B) hereof, this Agreement is solely for the benefit of B&M, MeC and the State, and nothing herein shall be deemed to create enforceable rights in any other third parties nor shall this Agreement be referred to in interpreting independent rights and obligations of other third parties.

IN WITNESS WHEREOF, the parties hereto set their hands and seals on the day and year first above written.

BOSTON AND MAINE CORPORATION

F. L. O'Brien
Witness

By: David A. Fink
David A. Fink, President

MAINE CENTRAL RAILROAD COMPANY

F. L. O'Brien
Witness

By: David A. Fink
David A. Fink, President

STATE OF NEW HAMPSHIRE
DEPARTMENT OF TRANSPORTATION

Karin Miller
Witness

By: Charles P. O'Leary, Jr.
Commissioner

MJL/1170/AF4
January 4, 1994

EXHIBIT A"Non-Operating Lines"

<u>Branch</u>	<u>Val.</u> <u>Sec.</u>	<u>Map</u>	<u>Station to</u>	<u>Val.</u> <u>Sec.</u>	<u>Map.</u>	<u>Station</u>
Asheulot	42.5	1	3+20	42.5	22	1134+65
Fort Hill	42.1	52	2651+48	42.1	61	3120+79.4
Cheshire	39.1	12	569+58.5	39.1	54	2784+05
✓Northern	32.1	8	383+59.4	32.1	68	3515+69
Gonic	6	94	4920+80	6	96	2770+00
Lakeport	4.2	9	434+69.5	4.2	10	512+90
Mountain	17	1	2312+95.5	17	53	5060+25
Quebec Junction	19	1	0+92	19	1	33+00

EXHIBIT 3"Operating Lines"

<u>Branch</u>	<u>Val.</u> <u>Sec.</u>	<u>Map</u>	<u>Station</u> to	<u>Val.</u> <u>Sec.</u>	<u>Map.</u>	<u>Station</u>
Hills- borough	17	1	1+20	17	16	814+55.4
M&L	10	1	1567+28.2	10	4	1772+01
M&L	10	18	2475+72	10	24	2797+25
✓ White Mountain	21	35	1835+35	21	36	56+75
Northern	32.1	1	12+60	32.1	8	383+59.4
Northern	32.1	68	3515+69	32.1	70	3661+48
Lakeport	4.2	8	395+48.5	4.2	9	434+69.5
Lakeport	4.2	10	512+90	4.2	17	891+46
Conway	2	68	3685+31	2	68	3699+12

(All Land North of Line Drawn 33' From Centerline of Main Line)

Conway	4.1	S1	16+81	4.1	S3	322+70
Conway	4.1	5	224+64	4.1	14	702+71
Portsmouth	3	SL55A	-13+05	3	SL55A	33+00

(Formerly V.28, MAP SL1)

Portsmouth	28	2	33+00	28	11	522+57
Portsmouth	28	38	1967+15.5	28	41	2104+08
✓ Concord and Claremont	21	35.1	16+70	21	35.2	92+40
Hollis	6	47	2444+20	6	47	2408+35

EXHIBIT C

"Abandoned Lines"

<u>Branch</u>	<u>Val.</u> <u>Sec.</u>
Hollis	6 (excepting those portions listed on <u>Exhibit B</u>)
Blackmount	21
Cocheco	4.2
Concord and Claremont	21 (excepting those portions listed on <u>Exhibit B</u>)
Goffstown	23.2
Hopkinton	33.2
Greenville	36.4

NOTE: Where an entire rail line is referenced, only the Val. Sec. is given. When necessary to delineate portions of a rail line, the Map and Station referenced are provided.

EXHIBIT D

THE STATE OF NEW HAMPSHIRE

HILLSBOROUGH, SS
NORTHERN DISTRICT

SUPERIOR COURT

Hillsborough County North:

92-E-142 Boston and Maine Corp. V. Charles P. O'Leary, et al.
92-E-102 Boston and Maine Corp. V. Charles P. O'Leary, et al.
92-E-207 State of New Hampshire V. Boston and Maine Corp.

Hillsborough County South:

92-E-034 State of New Hampshire V. Boston and Maine Corp., et al.

Rockingham County:

92-E-162 State of New Hampshire V. Boston and Maine Corp., et al.

Merrimack County:

92-E-171 State of New Hampshire V. Boston and Maine Corp., et al.

Grafton County:

92-E-051 State of New Hampshire V. Boston and Maine Corp., et al.

STIPULATION FOR ENTRY OF CONSENT ORDER

NOW COME the parties to the above captioned cases and agree that the Court issue the following order in these consolidated cases:

1. Docket Nos. 92-E-102 and 92-E-142 shall be marked:
"Neither Party. No costs. No further actions to be brought for the same causes, or any combination of them."

2. Docket Nos. 92-E-207, 92-E-034, 92-E-162, 92-E-171, and 92-E-051 shall be marked: "Decree for Petitioner. The State of New Hampshire owns those portions of the Northern Line, the Hillsborough Branch, and Manchester and Lawrence Line described in Exhibits A, B, and C, attached to the respective petitions, in fee simple absolute, unencumbered by any leasehold or other interest of the Boston and Maine Corporation."

WHEREFORE, the parties hereto respectfully pray that the
Court enter appropriate orders in accordance herewith.

Respectfully submitted,

BOSTON & MAINE CORPORATION

By its attorneys,

SHEEHAN PHINNEY BASS + GREEN
PROFESSIONAL ASSOCIATION

By:

James Q. Shirley, Esquire
1000 Elm Street, P.O. Box 3701
Manchester, NH 03103-3701
(603) 668-0300

THE STATE OF NEW HAMPSHIRE AND
CHARLES P. O'LEARY, JR.,
COMMISSIONER, DEPARTMENT OF
TRANSPORTATION

By their attorneys,

JEFFREY R. HOWARD, ATTORNEY
GENERAL

By:

Michael J. Walls, Esquire
Senior Assistant Attorney
General
State House Annex
25 Capitol Street
Concord, NH 03301
(603) 271-3675

SEC. 22. No note or obligation given by any stockholder, whether secured by any pledge or otherwise, shall be considered as payment of any part of the capital stock, and no loan of money shall be made by any such company to any stockholder therein; and if any such loan shall be made to a stockholder, the officers who shall make it or who shall assent thereto, shall be jointly and severally liable to the extent of such loan and interest, for all the debts of the company contracted before the payment of the sum so loaned.

SEC. 23. The whole amount of the debts which any such company shall at any time owe, shall not exceed the amount of its capital stock actually paid in, and the cost of its stock and manufactured goods on hand and unsold; and in case of any excess the directors under whose administration it shall happen, shall be jointly and severally liable to the extent of such excess, for all the debts of the company then existing, and for all that shall be contracted so long as they shall respectively continue in office, and until the debts shall be reduced to the said amount of the capital stock.

SEC. 24. Any of the directors who shall be absent at the time of contracting any debt, contrary to the foregoing provisions, or who shall object thereto, may exempt themselves from the said liability, by forthwith giving notice of the fact to the stockholders at a meeting which they may call for that purpose.

SEC. 25. If any certificate made, or public notice given by the officers of any manufacturing company, in pursuance of the provisions of this chapter, shall be false in any material representation, all the officers who shall have signed the same, knowing it to be false, shall be jointly and severally liable for all the debts of the company, contracted while they were stockholders or officers thereof.

SEC. 26. When any of the officers of any manufacturing company shall be liable by the provisions of this chapter, to pay the debts of such company or any part thereof, any person to whom they shall be so liable, may have an action on the case against any one or more of the said officers, and the declaration in such action shall state the claims against the company, and the ground on which the plaintiff expects to charge the defendant personally; and such action may be brought notwithstanding the pendency of an action against the company, for the recovery of the same claim or demand, and both of the said actions may be prosecuted until the plaintiff shall obtain the payment of his debt and the cost of both actions.

SEC. 27. When the stockholders of any manufacturing company shall be liable by the provisions of this chapter, to pay the debts of such company or any part thereof, their property may be taken therefor on any writ of attachment or execution issued against the company for such debt, in the same manner as on writs and executions issued against them for their individual debts.

SEC. 28. When any of the said officers or stockholders are liable,

as mentioned in the two preceding sections, for the debts of any such company, the person to whom they are so liable, may instead of the proceedings mentioned in said two sections, have his remedy against the said officers or stockholders by a bill in equity in the superior court.

SEC. 29. Any stockholder who shall, whether voluntarily or by compulsion, pay any debt of the company for which he is made liable by the provisions of this chapter, may recover the amount so paid in an action on the case against the company, in which action the property of the company only shall be liable to be taken, and not the property of any stockholder of the company; or the person who shall have so paid such debt of the company, may have a bill in equity in the superior court for contribution against any one or more of the stockholders who were originally liable with him for the payment of the said debts, and may recover against each of them their just and equitable proportion thereof.

SEC. 30. Any officer of a manufacturing company, who shall pay any debt of the company for which he is made liable by the provisions of this chapter, may recover the amount so paid in an action against the company for money paid for their use, in which action the property of the company only shall be liable to be taken, and not the property of any stockholder.

SEC. 31. When the treasurer of any manufacturing company within this State shall not be resident therein, a record of the ownership of the shares in such company shall be kept by the clerk thereof, and the said shares shall be liable to attachment, as the property of the person or persons who by such record shall, at the time of the attachment, appear to be the owner or owners thereof.

SEC. 32. The service of all process issuing from any court or civil magistrate in this State, either against the corporation or a stockholder, if made upon the clerk, shall be as valid to all intents and purposes as if made on the treasurer.

SEC. 33. The proceedings of any such corporation may be inquired into and examined at any time, by a committee appointed by the legislature for that purpose, at the expense of said corporation.

CHAPTER 142.

OF RAILROAD CORPORATIONS.

SECTION

1. Land for railroad, not to be taken without consent of owner.
2. Guardian may sell land, when.

SECTION

3. Land may be purchased adjoining road.
4. Bridges or gates at road crossings.
5. If not made, rails may be taken up.

1840 Law

MARK- FRANKS DIDNT HAVE THE SESSION LAWS FOR
EITHER 1840 OR 1844, BUT I THINK THESE
ARE THE TWO BILLS YOU WERE LOOKING
FOR. IF NOT, PERHAPS THE SUPREMES HAVE A
COMPLETE SET OF SESSION LAWS.

SECTION

5. Fences on railroads, how maintained.
7. Corporation may recover of person liable.
8. Damage by fire or steam, liability.

SECTION

9. Corporation may insure against.
10. Corporation may contract with any other corporation for transportation.

SECTION 1. No railroad corporation shall take any land for the use of such corporation, without the consent of the owner thereof.

SEC. 2. When the lands of any infant or other person under guardianship, shall be necessary for the construction of any railroad in this State, the guardian of such infant or other person may sell and convey such land or any right therein, so far as the same may be necessary, to the corporation for whose use such land may be required for such railroad, with the approbation and license of the judge of probate for the county in which such guardianship is instituted, and not otherwise.

SEC. 3. Any railroad corporation may purchase and hold real estate lying near to or adjoining such road, and may convey the same, to an amount not exceeding five per cent. of its capital stock.

SEC. 4. If any railroad shall intersect or cross any highway in any town in this State, such town may at any legal town meeting direct that such place of crossing or intersection shall be secured by a bridge over said road, or by the erection of gates on both sides of said highway, as the town may think expedient.

SEC. 5. If after due notice given of such vote to the clerk of such railroad corporation, such corporation shall neglect for the space of six months to erect and complete, to the satisfaction of the selectmen of such town, such bridge or gates according to the vote of the town as aforesaid, the selectmen may remove or cause to be removed the rails from such railroad where it crosses such public highway, and no engine or car shall be permitted to run across such highway, until the vote of the town shall be complied with.

SEC. 6. If any railroad corporation shall neglect to keep a sufficient and lawful fence on each side of their road, any person against whose land such fence is insufficient, may notify the agent of such corporation thereof, and if such fence shall not be made sufficient within twenty days after such notice, the owner of such land may make or repair such fence, and may thereupon recover of said corporation in an action of assumpsit, double the amount necessarily expended in making or repairing the same as aforesaid; provided, however, that the foregoing provisions of this section shall not apply to any case, where such corporation shall have settled with and paid the owner of such land for building and maintaining such fence.

SEC. 7. If any person having been thus settled with and paid for keeping any such fence in repair, shall neglect so to do, such railroad corporation may make such repairs and recover the necessary expense thereof of the person liable.

SEC. 8. Every railroad corporation shall be liable for all damages which shall accrue to any person or property within this State, by fire or steam from any locomotive or other engine on such road.

SEC. 9. Every such corporation shall have an insurable interest in all property situated on the line of such road, and exposed to damage as aforesaid, and may effect insurance thereon for the benefit of such corporation.

SEC. 10. Any railroad corporation may contract with any other railroad corporation, for the transportation of freight or passengers, and the conducting of all business connected therewith on their road.

CHAPTER 143.

OF THE PROPRIETORS OF COMMON LANDS.

SECTION

1. Proprietors may make by-laws.
2. Meetings, where to be holden.
3. Officers, their choice and duties.
4. " where to reside.
5. Voting, right of, regulated.
6. Assessments may be made, how.
7. Warrant to be given to collector.
8. Notice of assessment, how given.
9. If assessment unpaid, right may be sold.
10. Mode of sale and conveyance.
11. Sales, where to be made.
12. Share of delinquent only to be sold.
13. Redemption, time and mode of.
14. If not redeemed, deed to be given.

SECTION

15. Ratification of grants and votes.
16. Clerk to furnish copies of votes.
17. Proprietary records to be lodged with town clerk, when.
18. If concerning two towns, to be lodged in the oldest town.
19. To be lodged with secretary, when.
20. When may be recalled by town.
21. Penalty for wilfully retaining records.
22. Copies of records, how certified.
23. Effect of such copies as evidence.
24. Fees for copies.
25. Penalty for neglect to make copies.
26. Penalty for destroying records.
27. Meetings of Masonian proprietors.

SECTION 1. The proprietors of common lands in any town in this State, at any legal meeting thereof, may provide a mode for calling future meetings, choosing officers, laying assessments and transacting all other business concerning such propriety, and may establish by-laws therefor.

SEC. 2. All proprietary meetings and adjournments thereof, for any town having fifty or more families settled and resident therein, shall be holden in such town; and for all towns having a less number of families settled therein, in the nearest town in the same county having such number, or in the shire town of the county.

SEC. 3. At any legal meeting holden for that purpose, said proprietors may choose a clerk and treasurer, and such other officers as they shall deem necessary to manage the affairs of such propriety, and prescribe their powers and duties, which officers shall be

Resolves.

shall be paid by the party applying for the appointment of such committee.

Sec. 3. *And be it further enacted*, That if any owner or owners of land thus taken shall refuse, upon tender being made to them of the amount of damages awarded by the committee, to receive the same, then such railroad corporation may continue to use said land, and the party refusing to accept the award may have his remedy as is now provided by law.

Approved, Dec. 23, 1840.

CHAPTER DLXXXV.

RESOLVED by the Senate and House of Representatives in General Court convened, That the sum of seven thousand dollars be, and the same hereby is appropriated for the use of the State Prison, for the purpose of paying the amount due from the Prison to the late Warden, and of enabling the present Warden to carry on the business connected with said institution; and that His Excellency the Governor be, and he hereby is authorized to draw the above sum from the Treasury by his warrants, from time to time as he may think necessary.

Approved, Dec. 10, 1840.

CHAPTER DLXXXVI.

RESOLVED by the Senate and House of Representatives in General Court convened, That the sum of five hundred dollars be, and the same is hereby appropriated, for the contingent expenses of this State; and that His Excellency the Governor be, and hereby is, authorized to draw, from time to time, from the Treasury, for such expenses, such sums as to him may appear necessary, not exceeding in the whole the above sum.

Approved, Dec. 10, 1840.

Rail Road Corporations.

CHAPTER DLXXXIV.

AN ACT relating to Railroad Corporations.

SECTION 1. *Be it enacted by the Senate and House of Representatives in General Court convened*, That from and after the fifteenth day of March, A. D. 1841, it shall be lawful for the owner or owners of any land taken by any railroad corporation in the construction of their railroad, when such land owner shall not have been fully compensated for the same on or before the fifteenth day of March, 1841, to remove the rails from said railroad, fence up the land, and take and retain possession of the same until entire satisfaction is made to the owner or owners of the land thus taken: *Provided, however*, that said land owner or owners shall first notify, in writing, the clerk of said corporation of his or her intention of fencing up such land, and removing the rails therefrom, at least fifteen days prior to doing the same; and *provided further*, that if any railroad corporation, who shall have taken from any individual, his or her land for the construction of such railroad, shall, on or before the said fifteenth day of March, procure, at the expense of said corporation, the appointment of a committee by the Justices of the Court of Common Pleas, in the county where such railroad is located, to award the damages to the land owner or owners for land thus taken, and shall tender to such land owner or owners the amount of damages awarded by said committee, on or before said fifteenth day of March, then this act shall be null and void, otherwise it shall remain in full force.

Sec. 2. *And be it further enacted*, That it shall be the duty of the clerk of any railroad corporation, which railroad corporation shall have taken from any individual his or her land in the construction of such railroad, and for which land such land owner or owners shall not have received full and ample compensation, to notify such land owner or owners of their intention to make application to the Justices of said Court for the appointment of a committee to award their respective damages; and the land owner or owners may in all cases employ counsel, who

Land owners may remove the rails of a railroad and fence up the land, if not compensated for the same.

Proviso.

Duty of clerks of railroad corporations.

\$7000 appropriated for State Prison.

\$500 appropriated for contingent expenses of the State.

A. D. 1840.

Land may be used on tender of damages.

Amended to 1840 law

LAWS

1844 Law

OF THE

STATE OF NEW HAMPSHIRE,

PASSED NOVEMBER SESSION, 1844.

CHAPTER 128.

AN ACT to render railroad corporations public in certain cases, and constituting a board of railroad commissioners.

SECTION

1. Commissioners to be appointed.
2. Commissioners removable by governor and council.
3. Railroad corporations public in certain cases.
4. Railroad corporations may petition commissioners to survey route.
5. Commissioners on application, to lay out road.
6. Commissioners to make report to governor and council.
7. Corporation may appeal to governor and council.
8. Governor and council may lease to corporation.
9. Corporation to deposit with state treasurer amount of damages assessed, &c.
10. State may resume the right and privilege of corporation.

SECTION

11. Excess over ten per cent. to be paid into state treasury.
12. Transportation of State or United States' property.
13. Tolls subject to alteration by legislature.
14. Stockholders to pay toll.
15. Locomotives or cars may be placed on road.
16. Corporation shall not discontinue road.
17. Records, papers and files open to inspection.
18. Commissioners to examine condition of each railroad.
19. Commissioners may examine under oath.
20. Compensation of commissioners.
21. Acts repealed.
22. Act to take effect.

SECTION 1. *Be it enacted by the Senate and House of Representatives in General Court convened,* That there shall be appointed in the month of December, A. D. 1844, by the governor, with advice of the council, a board of railroad commissioners, consisting of three. The office of the one first appointed, shall be vacated at the end of one year from the second Wednesday of June, A. D. 1845; of the second, at the end of two years from the second Wednesday of June, 1845; and of the third, at the end of three years from the second Wednesday of June, 1845; and at the expiration of the term of each of said offices, successors shall be appointed in the manner above prescribed, for the term of three years from the time of their appointment, respectively, and so on in the same manner thenceforward, so that one shall be ap-

pointed during the June session of the legislature of every year, to hold their offices each for the term of three years, or until others are duly appointed in their stead, who shall be commissioned by the governor, and sworn to the faithful performance of the duties of their offices, in the same way and manner as justices of the peace are now sworn, and whose duties shall be as is hereinafter prescribed.

Sec. 2. Said commissioners shall be removable by the governor and council, for good cause shown, and all vacancies in the board shall be filled by the governor and council.

Sec. 3. All railroad corporations, which now are or shall hereafter be chartered by the authority of this State, and which shall be unable to purchase the lands for their roads of the owners on their respective routes, at rates to be agreed upon by the parties, are hereby made and declared to be public corporations: *provided*, they adopt the provisions in this act contained, as a part of their charters, which adoption shall be by vote of the corporation at a meeting duly held for that purpose, and by filing in the office of the secretary of state a duly authenticated copy of the record of such vote of adoption, to be by him published, at the expense of the corporation, in the same manner as the laws of the State are now published.

Sec. 4. Any such corporation, having adopted the provisions of this act as aforesaid, may by petition, authorized by vote of the corporation, signed by their president and clerk, apply to said board of commissioners, who shall thereupon proceed to make such a survey of the route proposed by the corporation so applying, as they shall deem necessary, with the assistance of an engineer, to be by them selected, if in their opinion the same shall be necessary, which route shall be within the limits prescribed and authorized by the charter of said corporation; and if after due hearing of the petitioners and of such persons as shall object to the laying out of the proposed railroad, notice of the time and place of hearing being first published in the New Hampshire Patriot and State Gazette, two weeks successively, the last publication to be at least two weeks before the day of hearing, which shall be legal notice to all parties concerned, the opinion of said commissioners or a majority of them, be that the public good would not be promoted by the laying out of such road, the commissioners shall proceed no further in the matter, unless an appeal be taken as is provided in the 7th section of this act; but if their opinion be that the public good would be promoted by the laying out of the proposed road, the commissioners shall, as seasonably as may be, make report of such decision, containing a description of the road laid out, to the governor and council, which report shall be filed in the office of the secretary of state; and the governor, with advice of the council, at their next session after such report shall be so filed, shall proceed to consider the same, and shall decide whether in their

opinion the public good would be promoted by the laying out of said road; which decision shall be immediately communicated by the governor, by written order, to the railroad commissioners; and the commissioners, if said decision is adverse to the laying out of the proposed road, shall proceed no further in the matter.

Sec. 5. If the decision of the governor and council is favorable to the laying out of the proposed road, the commissioners shall, on written application of the corporation, proceed to lay out said road so surveyed, and, in conjunction with the road commissioners in the several counties where such lands may lie, shall assess the damages sustained by the owners of land, in the same way and manner as road commissioners in the several counties are now by law required to do; and the same right of appeal to the court of common pleas in the county where such lands may lie, to be proceeded with in the same way and manner, is hereby secured to the land owners, as is provided in section eight of chapter fifty-one of the Revised Statutes: *provided*, that the corporation may at any time, if any unexpected difficulty occurs, propose such variations of the original route so surveyed as to them may seem necessary, and apply by petition to the railroad commissioners, who shall examine the proposed variations of the route, and if they deem expedient, lay out such proposed variations, and assess the damages in the same way and manner above provided, and the same proceedings may be had relative thereto as in the case of the original route.

Sec. 6. Said commissioners shall, as soon as they reasonably may, make a report of all their proceedings, containing a particular description of the railroad route laid out, and their assessment of the damages awarded to the several land owners, in the same way and manner as county road commissioners are required to do, in chapter fifty-one of the Revised Statutes, except that such report shall be made to the governor and council, and shall be filed in the office of the secretary of state, and by him recorded in a book kept for that purpose: *provided*, that such damages be paid to the land owners only in case of entry on the route to construct said road, and no land so appraised shall be entered upon for the construction of the road, until the damages assessed as aforesaid, are paid or tendered to those entitled to the same, or to their legal representatives, by the railroad commissioners in behalf of the State, in the same way and manner as is required in case of highways made by towns, and said commissioners shall draw on the state treasury by their order, for the sums necessary for that purpose.

Sec. 7. If in any case after the survey made, the decision of the commissioners shall be adverse to the laying out of the proposed railroad, and the corporation shall be dissatisfied therewith, they may through their president or agent, appeal by petition to the governor, who, with advice of council, shall proceed to consider the

matter, and if necessary, give hearing to the parties interested; and if, in the opinion of the executive, the public good would be promoted thereby, shall issue an order, directing the laying out of the proposed railroad, to the railroad commissioners, who shall thereupon proceed to lay out said road, and do all other things as in other cases of roads by said commissioners laid out.

Sec. 8. The governor and council, whenever said road is laid out as aforesaid, shall, on written application of said corporation therefor, by indenture of lease, under seal of the State, signed by the governor and certified by the secretary of state, lease and guaranty to said corporation for a term not less than one hundred years, not more than two hundred years, the right to construct a railroad over said route, for the public use and benefit, with the right of user in the same to pass and repass with their locomotives, cars and vehicles of transportation thereon, and for other usual and necessary purposes of a railroad, in the same way and manner as they would be allowed to do by their charter of incorporation before granted, which charter shall remain in force, except so far as the same shall be changed and modified by the provisions and restrictions in this act contained; *provided*, that at the expiration of said term, the right so leased shall revert to the State; and such lease may be renewed in the same way and manner as above specified, subject to the restrictions incident to the lease before granted, or to such other restrictions as may be prescribed by the legislature at the time of such renewal: *provided*, further, that if, at the expiration of any such term, the State shall decline to renew by lease the right of said corporation in such road, they shall make to said corporation due compensation therefor; and an attested copy of every such indenture of lease shall be recorded by the secretary of state in the council record.

Sec. 9. Such corporation shall, after the execution of the lease aforesaid, and before the delivery of the same, deposit with the state treasurer for the time being, who is hereby made an agent for that purpose, a sum equal to the whole amount of damages assessed as aforesaid, for the land over which said road shall pass: *provided*, that if the title of any land so taken by the State shall fail, so that a re-appraisal of the same becomes necessary, the corporation shall pay the damage and expense thereof.

Sec. 10. The State may, at any time after twenty years, resume the right and privilege of the corporation in such railroad, on giving one year's notice, and paying to the corporation all it may not have received of its expenditures, and interest on such expenditures, at the rate of ten per cent. per annum.

Sec. 11. Such corporations shall keep exact accounts of all their receipts and expenditures, and make annual reports thereof to the railroad commissioners, who shall annually communicate the same to the legislature, and in any and every year when their net receipts shall be found to exceed the average of ten per cent.

on their expenditures, from the commencement of their operations, the excess shall be paid into the treasury of the State, until otherwise directed by the legislature.

Sec. 12. Such corporation shall, in time of war, insurrection or invasion, carry and transport soldiers, munitions of war belonging to the State, upon its road, when by the State or their authorized agents thereto required, free of charge, and all other property belonging to the State, at such rates as the governor and council shall impose, if the parties do not agree, and shall carry and transport soldiers, munitions of war, and all other property belonging to the United States, and the mails of the United States, when by the United States or their authorized agents thereto required, at such rates and on such conditions as the governor and council of this State shall allow and impose, in case the United States and such corporation cannot agree upon the same, and the United States shall consent to submit the matter to the decision of the governor and council as aforesaid.

Sec. 13. The rates of toll for freight of passengers and merchandise, when the net income of the stock shall exceed ten per cent., shall be subject to alteration and revision by the legislature, according as they shall deem just and expedient.

Sec. 14. All directors, stockholders and officers of said corporation, except when engaged in the immediate management of the cars and repair and care of the road, and excepting also the superintendents, shall be subject and held to pay the same rates of toll for passenger fare and freight, as other individuals are held to pay.

Sec. 15. Such corporations, whenever thereto required by the legislature, shall permit all persons to run locomotives and cars on their road, or may be required by the legislature to draw the cars of such persons with the engines of the corporation on said road, subject to such rules, regulations and regulations as the legislature may from time to time prescribe, having due regard to the income of the said road, as heretofore specified, as well as the convenience, safety and welfare of all concerned: *and provided*, that when cars and engines are placed by others on the road, such others shall be liable to pay all damages arising from their own default or neglect.

Sec. 16. Such corporation shall not discontinue its road, nor neglect to keep the same in good repair, nor omit to discharge its duties in carrying passengers, merchandise or other freight, without the consent of the legislature, and shall in all things conform to the provisions of this statute; and in default thereof, shall be liable to indictment and fine in the county where such want of repair occurs, or in case of any violation of the laws, rules and regulations above named, in any county in which the road or any part thereof may be situated.

Sec. 17. All railroad corporations in this State which have been heretofore or shall hereafter be incorporated, shall keep a full

record of all their doings and submit all their records, papers and files to the inspection of the legislature, its committees or railroad commissioners, when thereto by them required.

Sec. 18. It shall be the duty of one of said commissioners, once at least in each year, without previous notice to the corporation, and as much oftener as the governor may require, to make personally, a full examination into the condition of each railroad corporation in the State, and the management of its affairs, to inspect, so far as may be practicable, all books, papers, notes, records, bonds, and other evidences of debt, and all property, deeds and bills of sale of property of said corporations, to ascertain whether they shall have faithfully and fully observed and performed all their liabilities and obligations to the State and to individuals, and whether they have violated any of the provisions of their charters, or of any law relating to railroad corporations, and report the condition of each railroad to the governor, as soon as may be after such examination, which reports shall be by the governor communicated to the legislature at their next annual session after the same shall be so made to him.

Sec. 19. Any railroad commissioner may examine, under oath, all the officers, agents or servants of any railroad corporation, or any other person, in relation to the affairs and condition of such corporation, and may administer such oath personally.

Sec. 20. Such commissioners shall receive for their services under this act, at the rate of ten cents per mile each way for necessary travel, and three dollars for each day necessarily employed in such services, including expenses, the same to be paid by the corporations, on whose petition they shall make surveys, or into the examination of whose affairs they shall be employed, respectively, excluding the time of traveling to and from the place of survey or examination, and all expenses of any survey and assessments of damages, as aforesaid, shall be paid by the corporation, on whose petition the same shall be made: *provided*, that no one shall be appointed to the office of railroad commissioner, who shall be a stockholder, officer, or interested in any railroad corporation, whatever, and in case any one appointed to said office shall become such stockholder, officer, or so interested, he shall immediately thereon cease to hold said office.

Sec. 21. All acts and parts of acts inconsistent with the provisions of this act are hereby repealed.

Sec. 22. This act shall take effect immediately after its passage.

HARRY HIBBARD,

Speaker of the House of Representatives.

TIMOTHY HOSKINS,

President of the Senate.

Approved, Dec. 25, 1844.

JOHN H. STEELE, Governor.

CHAPTER 129.

AN ACT to establish a new proportion for the assessment of the public taxes.

SECTION

1. Proportion of public taxes.

SECTION

2. Warrant therefor to be issued.

SECTION 1. *Be it enacted by the Senate and House of Representatives in General Court convened,* That of every thousand dollars of public taxes hereafter to be raised, the proportion which each town and place shall pay, and for which the treasurer of the State is hereby authorized to issue his warrant, shall be as follows, to wit:

COUNTY OF ROCKINGHAM.

Atkinson,	two dollars thirty cents,	\$2.30.
Brentwood,	three dollars sixty-six cents,	3.66
Candia,	four dollars,	4.00
Chester,	six dollars twenty-eight cents,	6.28
Danville,	two dollars six cents,	2.06
Deerfield,	six dollars twenty-five cents,	6.25
Derry,	seven dollars eighty-four cents,	7.84
East Kingston,	two dollars eighty-one cents,	2.81
Epping,	five dollars ninety cents,	5.90
Exeter,	twelve dollars four cents,	12.04
Greenland,	three dollars twenty-eight cents,	3.28
Hampstead,	three dollars fifty-five cents,	3.55
Hampton,	five dollars,	5.00
Hampton Falls,	four dollars three cents,	4.03
Kensington,	three dollars twenty cents,	3.20
Kingston,	three dollars seventy-five cents,	3.75
Londonderry,	five dollars fourteen cents,	5.14
New Castle,	one dollar seventy-two cents,	1.72
Newington,	one dollar ninety-five cents,	1.95
New Market,	nine dollars thirty-three cents,	9.33
Newtown,	two dollars twenty-one cents,	2.21
North Hampton,	three dollars sixty-nine cents,	3.69
Northwood,	four dollars forty-three cents,	4.43
Nottingham,	four dollars ten cents,	4.10
Plaistow,	two dollars eighty cents,	2.80
Poplin,	two dollars sixteen cents,	2.16
Portsmouth,	forty-seven dollars fifty cents,	47.50
Raymond,	two dollars ninety-four cents,	2.94
Rye,	three dollars eighty cents,	3.80
Salem,	four dollars sixty-four cents,	4.64
Sandown,	two dollars thirty cents,	2.30

return to the adjutant general, to be laid before the commander-in-chief, which return shall be countersigned by the drill officer if he shall concur in the same, of all officers who shall excel at said school, and of all who may be remiss or who appear to be unfit to discharge the duties of their offices, or who shall be guilty of any unofficer-like conduct; and the last mentioned officers shall not be considered entitled to promotion by seniority, and such report may be communicated to the Legislature; and if, after notice to the officer of the substance of the same, it shall be unimpeached, it shall be considered sufficient cause and evidence for removal of said officer from his office by address.

Sec. 11. The day for the review of each regiment shall be appointed by the major general, or, if he shall fail to issue his orders seasonably, by the brigadier general, between the fifteenth of September and the fifteenth of October. The place of meeting shall be appointed by the field officers, and shall be as central as, in their opinion, convenience will permit.

Sec. 12. The commander-in-chief, with advice and consent of the council, is authorized from time to time to cause to be sold, and the proceeds thereof to be paid into the treasury, or exchange such military stores or property belonging to the State as may be found unserviceable or in a state of decay, or which, in the opinion of the commander-in-chief and council, it may be for the interest of the State should be disposed of.

Sec. 13. Whenever any military stores or property belonging to the State shall be destroyed by fire, or otherwise injured, the commander-in-chief, with advice and consent of the council, may from time to time settle and adjust the damages on account of the same, with the obligor of any bond or obligation for the safe keeping of the same, on such terms, or the payment of such sums into the treasury, as shall be by him, with advice and consent of the council directed.

Sec. 14. That in all cases where any officer, non-commissioned officer, musician or private, has received or shall receive fifty cents for his services in the year 1847, agreeably to the provisions of the act hereby repealed, such sum shall be deducted from the sum to which such officer, non-commissioned officer, musician or private will be entitled by virtue of the eighty-third chapter of the Revised Statutes, in case he complies with the provisions of said chapter.

Sec. 15. That the first and second sections of the ninety-third chapter of the Revised Statutes, and all other acts and parts of acts, inconsistent with the provisions of this act, be and the same hereby are repealed.

Sec. 16. This act shall take effect from the passage thereof.

MOSES NORRIS, Jr., *Speaker of the House of Representatives.*

HARRY HIBBARD, *President of the Senate.*

Approved July 3, 1847.

JARED W. WILLIAMS, *Governor.*

CHAPTER 485.

AN ACT in addition to an act passed December 25, 1844, entitled "An act to render railroad corporations public in certain cases, and constituting a board of railroad commissioners."

SECTION

1. Commissioners may alter location.
2. Alteration of location to operate as a discontinuance of former route.
3. Damages to land owners.

SECTION

4. Commissioners to certify damages to town clerks.
5. Acts repealed.
6. Time act takes effect.

SECTION 1. *Be it enacted by the Senate and House of Representatives in General Court convened,* That any railroad corporation, desirous of improving any part of its line by a variation of its location, may apply by petition to the railroad commissioners for that purpose, and if said commissioners, after due examination had, shall be of the opinion that the public good would be promoted thereby, they may lay out such proposed variation within the limits of the charter of the corporation, and assess the damages in the same manner, and the same proceedings shall be had relative thereto, as in case of an original route. *Provided,* however, that if the land over which the variation is located shall belong wholly to the corporation, the railroad commissioners shall in their report estimate the sum at which it shall be valued in case the State shall resume the right and privilege of the corporation in such railroad, without any further appraisal of damages for the same.

Sec. 2. The laying out of such variation as aforesaid, and the construction of a railroad thereon, shall operate as a discontinuance of that part of the former route for which such variation is a substitute.

Sec. 3. If the damages, awarded to land owners on that part of the route for which such variation is a substitute, shall not have been paid at the time the same is laid out as aforesaid, said land owners, upon such discontinuance, shall receive as damages only the amount of the actual loss or damage, to be appraised by the commissioners, at the time of such laying out, from which the land owner may appeal as in the case of an original appraisal of damages.

Sec. 4. The railroad commissioners shall in all cases certify the damages by them, separately or in conjunction with the road commissioners, awarded to the owners of land in each town, to the town clerk of such town, within ten days of the time of filing their report in the office of the Secretary of State, and such certificate shall be kept in the files of his office by such town clerk who shall note thereon, the time when it was received; and if such

time be less than thirty days prior to the term of the court of common pleas next to be holden in that county, any appeal of such owner of land from such award may be entered at the term of said court next to be holden after the lapse of said thirty days.

Sec. 5. All acts and parts of acts inconsistent with the provisions of this act are hereby repealed.

Sec. 6. This act shall take effect from its passage.

Approved, July 2, 1847.

CHAPTER 486.

AN ACT to amend an act, entitled "An act to render railroad corporations public in certain cases, and constituting a board of railroad commissioners."

SECTION 1. If any railroad corporation, in constructing or maintaining their railroad, shall in altering any highway, turnpike, bridge, or private way, for the purpose of constructing their railroad, over, under, or near such highway, turnpike, bridge or private way, or for any other purpose cause any inconvenience or injury to the lands, buildings or rights of any person or persons, or of any corporation, public or private, or shall continue any such inconvenience or injury, already existing, for the space of sixty days after notice of the same, in writing, is given to some officer of such railroad corporation; or if any railroad corporation shall, in constructing or maintaining their railroad, throw any obstruction upon, or cause any obstruction or injury to any highway, bridge, turnpike or private way; or permit any such obstruction or injury, already existing, to continue for the space of sixty days after notice of the same has been given as aforesaid, in any such case, the person or persons, or corporation, shall have and maintain an action on the case, and recover reasonable damages for the injury done. *Provided*, That in any case of obstruction or injury to any highway, turnpike, private way or bridge, as aforesaid, by any railroad corporation, such railroad corporation may, within sixty days after notice of such obstruction or injury, in writing, given as aforesaid, apply to the road commissioners of the county in which such case may occur, and said commissioners shall notify all interested, and examine such obstruction or injury; and if practicable, lay out a substitute for such highway, turnpike, private way or bridge, and assess damages for the land taken to build such substitute over, in the same way and manner as is now authorized by law in laying out roads; and if such railroad company shall pay for the land so taken, and build at their own expense

such substitute within such time, and in such manner as said road commissioners shall order and direct, and pay the expenses of the commissioners, and file a written certificate, signed by said road commissioners, that said railroad corporation have so built such substitute, and paid all expenses as aforesaid, in the office of the clerk of the court of common pleas in said county; then no such action on the case shall be sustained.

Sec. 2. This act shall take effect from and after its passage.

Approved, July 3, 1847.

CHAPTER 487.

AN ACT in addition to and in amendment of the laws of this State relating to corporations.

SECTION

1. Power of Legislature over corporations.

SECTION

2. Acts repealed.

4. Time act takes effect.

SECTION 1. *Be it enacted by the Senate and House of Representatives in General Court convened*, That the sixth section of the act, entitled "An act in amendment of the laws relating to corporations," passed June session, A. D., 1846, be and the same is hereby repealed.

Sec. 2. The legislature may at any time alter, amend or repeal the charter of any corporation, whenever in their opinion the public good shall require such amendment, alteration or repeal.

Sec. 3. All other acts and parts of acts inconsistent with the provisions of this act, are hereby repealed.

Sec. 4. This act shall take effect from and after its passage.

Approved, June 18, 1847.

CHAPTER 488.

AN ACT regulating the hours of labor in manufactories.

SECTION

1. Ten hours labor to constitute a day's work.

SECTION

2. Penalty for employing a minor more than ten hours.

Be it enacted by the Senate and House of Representatives in General Court convened,

SECTION 1. In all contracts for or relating to labor, ten hours

pted from the the operation
on of an act entitled "An act
owns into school districts, and
of school districts in certain cases
id that the provisions of said
far as concerns said town of
and citizens thereof.

Approved, June 19, 1840.

and are hereby constituted one regiment to be called and
own by the name of the forty-second regiment.

A. D. 1840.

SEC. 2. *And be it further enacted*, That said regiment
shall belong to and constitute a part of the sixth brigade and
second division of New Hampshire Militia.

Approved, June 19, 1840.

CHAPTER CCCCXCVIII.

R CCCCXCVI.

AN ACT relating to Rail Road and other corporations.

the Nashua Artillery company

ate and House of Representatives
, That the Adjutant General
id directed to purchase at the
pound pieces of brass ordnance
lery company in the fifth regim
s thereto, and that an appropri
e and is hereby made for that
be paid out of any money in
ropriated.

ther enacted, That the Adj
reby instructed to dispose of
ossession of said company and
into the State Treasury.

Approved, June 20, 1840.

SECTION 1. *Be it enacted by the Senate and House of
Representatives in General Court convened*, That the act en-
titled "An act providing for the assessment of damages for
and taken for Rail Road Corporations," approved January 13,
1837, and the act entitled "An act to provide a more cheap
and expeditious mode of assessing damages for lands or mate-
rials taken by Rail Road Corporations," approved June 16th,
1836, be, and the same hereby are repealed; *Provided*, that
this act shall not extend to any Rail Road which may have
been completed prior to the passage of this act; and provided
further, that "if any Rail Road may have been commenced,
and not completed prior to the passage of this act, it shall be
lawful for the corporation to proceed in the construction of the
Rail Road agreeably to the provisions of the acts hereby re-
pealed, provided said corporation shall first pay or cause to be
paid to the owners of land all damages assessed agreeably to
the provisions of said acts; and no lands shall be taken, used,
or occupied except to survey the same, till the damages so as-
sessed shall be paid to the owners thereof.

Repeal.

Proviso.

Damages to be paid.

R CCCCXCVII.

e the forty-second regiment.

ted by the Senate and House
Court convened, That the com-
caster, Northumberland, Dalt
n, Carrol, Kilkenny, Randol
, now constituting the first divi
nt, New Hampshire Militia;

SEC. 2. *Be it further enacted*, That the act entitled
"An act to authorize the town of Concord to purchase, and
hold stock in the Concord Rail Road Corporation," approved
January 14, 1837, be and the same is hereby repealed.

Repeal.

SEC. 3. *Be it further enacted*, That from and after the
passage of this act, it shall not be lawful for any corporation
to take, use, or occupy any lands, without the consent of the
owner thereof, unless the construction of the works contem-
plated in the act of incorporation, shall have been commenced
prior to the passage of this act.

Consent of the owner of lands.

SEC. 4. *Be it further enacted*, That it shall be the duty
of every Rail Road corporation, to erect, or cause to be erec-

ted, and keep, or cause to be kept, in good and sufficient repair, a proper and sufficient fence on each side of the track through the whole extent of the route; and should any Rail Road Corporation fail to make and keep in repair any fence aforesaid, any person may apply to the superior court for an injunction to stop the cars upon said Rail Road till said fence be made, or repaired as aforesaid; and said court is hereby authorized to issue the same.

Provided, That the provisions last aforesaid, shall not extend to cases where such corporations have already settled with and paid said owner or owners for building and maintaining such fences.

Provided further, That said corporations shall be responsible for the maintenance and repairs of such fences, and may maintain any proper action to recover the expense thereof, of such person or persons who may have contracted with such corporations to erect and maintain such fences, upon their neglect or refusal so to do.

Sec. 5. *Be it further enacted*, That all acts and parts of acts inconsistent with this act, be and the same are hereby repealed.

Approved, June 20, 1840.

CHAPTER CCCCXCIX.

AN ACT to establish times and places for holding Courts
Probate in the County of Coos.

SECTION 1. *Be it enacted by the Senate and House of Representatives in General Court convened,* That a Court of Probate, in and for the County of Coos, shall be holden at the times and places following, in every year, viz: at Colebrook on the first Tuesday of September, at Stratford on the first Tuesday of June, at Lancaster on the first Tuesday of March, May and November, at Bartlett on the first Tuesday in July, at Shelburne on the first Tuesday in May.

SEC. 2. *And be it further enacted,* That all acts and parts of acts heretofore passed so far as they establish other times and places for holding Courts of Probate in said County; and the same are hereby repealed; and that all matters and things to be returned to, or heard in said Court, shall be returned to said Court and determined at the times specified in this act, any law to the contrary notwithstanding.

Approved, June 19, 1840

CHAPTER I

AN ACT in amendment of an act en-
to an act entitled an act for laying c
3, 1829.

SECTION 1. *Be it enacted by the Representatives in General Court of the County of Common Pleas, in any town of opinion that any highway be of public utility and that the expenses of making and sufficient repair are burdensome upon the town through which the same shall pass, or the delegates in such County in the absence of the delegates for ascertaining the expenses of making and sufficient repair, be of opinion that the expenses of making and sufficient repair of any highway as aforesaid, in any town shall be paid by the County; then in every such case the delegates are hereby empowered and directed to apportion a part of the expenses incident to such highway to the town making and putting the same in repair, and shall adjudge most equitable and right, and the delegates of said Court may put any such highway in repair as they may direct, and the expenses of such highway by the county in which such towns are situated, and said Court are hereby empowered to make their order upon the Treasurer of the County for the sums expended under the provisions of this act.*

SEC. 2. *And be it further enacted that if any act or law is inconsistent with the provisions of this act, the same be repealed.*

Api

CHAPTER

N ACT to sever a part of the farm
the town of Alton, and annex the
stead.

Be it enacted by the Senate and
General Court convened, That one

34 NH 282

BLAKE v. RICH.

The fee in land taken for the purpose of constructing a railroad under the laws of this State, remains in the owner of the soil from whom the land is taken, subject to the easement of the corporation, as leased to them by the State.

The exclusive right of property in the land, in the trees and herbage upon its surface, and the minerals below it, remains unchanged, subject, always, to the right of the corporation to construct and operate a railroad over and through it, as authorized by law.

TRESPASS, for wood taken by the defendant from the plaintiff's land, situate in Northumberland. Plea, the general issue.

It appeared that the Atlantic and St. Lawrence Railroad Co. had a strip of land, six rods in width, laid out through the plaintiff's land for the purposes of said road, and that the wood in question was cut upon said strip of six rods wide, and between the track of said road and the boundary lines of said strip on either side, by the defendant, for a person in the employ of said corporation, and there was evidence tending to show that it was used for the company.

The defendant introduced and read, without objection, records and files from the Court of Common Pleas, showing an appeal by the plaintiff from the decision of the railroad commissioners in conjunction with the selectmen of Northumberland, laying out the road over the land of the plaintiff, and assessing his damages; and it appeared that there was a jury trial, and verdict for the plaintiff on said appeal, and a transfer of the case to the Superior Court; and it was admitted by the plaintiff that before the questions of law arising upon said case were decided by said Superior Court, the damages, as assessed by the jury, and costs, were paid by said company to the plaintiff. Either party may refer to any records and files of the court in said case.

The court ruled and instructed the jury, that notwithstanding said appeal and verdict, and the payment of the damages, as assessed by the jury, the wood upon said land would be the property of the plaintiff.

The jury returned a verdict for the plaintiff, which the defend-

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structions

Haywood

J. W.

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courts.

 Blake v. Rich.

ant moves the court to set aside, because of said ruling and instructions to the jury.

Haywood and Ramsay, for the defendant.

J. W. & G. C. Williams, for the plaintiff.

FOWLER, J. The only question presented in this case arises upon the instructions of the court to the jury, that the wood upon the plaintiff's land that had been taken for the purpose of constructing a railroad thereon, continued the property of the plaintiff, notwithstanding the railroad corporation, to whose use there was evidence tending to show it had been converted by the defendant, or the person for whom he acted, had paid the plaintiff the damages awarded him for the laying out of their railroad through his land, after an appeal taken from the assessment of the railroad commissioners and selectmen of Northumberland, in which town the land was situate. This question involves a consideration of the nature and extent of the interest which a railroad corporation acquires in the land laid out by the railroad commissioners for their road, under the laws of this State. Although such an enquiry, depending as it does in some degree upon the construction of statutes, must necessarily, from the brief period of the existence of railroads, be somewhat novel, and attended with more or less difficulty, from the want of those illustrations which the repeated adjudications of judicial tribunals have thrown upon other questions of that character; yet, so strong are the analogies between the taking of lands for the purposes of a public highway, and for the purposes of a railroad, and such the similarity of language employed by the legislature in the two cases, and so clear and unequivocal the terms used in reference to the rights acquired by railroads, that we think the result of even a limited investigation of the subject could hardly fail to be satisfactory, even if the question had not, as we conceive it has, been already virtually decided by our own courts.

Blake v. Rich.

It is well settled, by numerous decisions in this State, that in the land of individuals, laid out for public highways in pursuance of our statute, the public and the public authorities acquire only an easement, or right of way; a right to employ it for the purposes of constructing, maintaining and using a public highway thereon. The soil and freehold belong to the owners of the land, subject only to this easement or incumbrance. *Makepeace v. Warden*, 1 N. H. 16; *Avery v. Maxwell*, 4 N. H. 37; *Mills v. Stark*, 4 N. H. 513; *Hopkins v. Crombie*, 4 N. H. 525; *Copp v. Neal*, 7 N. H. 276; *Leavitt v. Towle*, 8 N. H. 97; *State v. New-Boston*, 11 N. H. 407; *Baker v. Shephard*, 4 Foster 208.

It has also been deliberately decided, after an able and learned examination of the subject, that the right to use the trees, necessarily cut down from the land in constructing the highway, for the purpose of building and repairing the road, is not acquired by the laying out of a highway, but that the only right acquired in relation to trees growing upon such land is the right of cutting down and removing to a convenient distance, for the use of the land-owner, such and so many of them as it may be necessary to remove in order to make or repair the road in a proper manner. *Baker v. Shephard*, *ubi supra*.

The same doctrine has obtained in other jurisdictions. In *Adams v. Emerson*, 6 Pick. 57, it was holden by the Supreme Court of Massachusetts that the owner of land laid out for a turnpike, regarded in that State as well as in this as a public highway, has the exclusive right of property in the land, subject to the easement, or right incident to a public highway, and that the herbage, as well as all trees and mines, are the exclusive property of the owner of the soil.

In *Barclay v. Howell*, 6 Peters 498, it was decided by the Supreme Court of the United States, that by the common law the fee in the soil remains in the original owner, where a public road is established over it; and while it is used as a highway he is entitled to the timber and grass which may grow on the surface, and to all minerals which may be found below it.

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Even the right of the public authorities to remove gravel, sand, rocks, or other materials from the travelled part of any highway, without damage or injury to the adjoining land, to any other part of the highway, for the purpose of repairing and grading the same, would seem in this State to depend on the provisions of the statute specially conferring this power upon surveyors of highways. Rev. Stat., chap. 55, sec. 15; Comp. Stat., p. 147, sec. 16.

Unless, then, a railroad corporation, by the laying out of their road over and across the lands of individuals, acquires a higher, more extensive and more exclusive right than the public and the public authorities gain by the laying out of such lands as a public highway, there can be no doubt the trees in controversy continued to be the property of the plaintiff, notwithstanding the award of damages and its payment, and the instructions of the court below were strictly correct.

Does the railroad corporation acquire any such higher, more extensive and more exclusive right? A careful examination of the various statutes authorizing the taking of land for railroads, and a comparison of the language with that of those statutes providing for the taking of land for highways, satisfies us it does not; and we see nothing in the use to which the land is appropriated in the one case and the other, requiring the same phraseology to be differently construed in the two cases. By the theory as well as the letter of the law, the taking in both cases is for the public use, and that use is no more inconsistent with the continuance of the fee in the original owner in the case of a railroad than in that of a highway. The damages are assessed in substantially the same mode in both instances, and are to be the same in both.

The commissioners and selectmen are required to assess the damages sustained by the owners of land by reason of the laying out of a railroad, in the same way and manner as road commissioners in the several counties are required to do, (Comp. Stat., p. 343, sec. 10,) and these latter are required to assess the damages sustained by owners of land as selectmen of towns

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decisions in this State, that in for public highways in pursu- l the public authorities acquire ; a right to employ it for the ing and using a public high- ld belong to the owners of the or incumbrance. *Makepeace v. Maxwell*, 4 N. H. 37; *kins v. Crombie*, 4 N. H. 525; *avitt v. Towle*, 8 N. H. 97; 407; *Baker v. Shepard*, 4

ded, after an able and learned right to use the trees, neces- constructing the highway, for ing the road, is not acquired t that the only right acquired such land is the right of cut- nient distance, for the use of of them as it may be neces- or repair the road in a proper *supra*.

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Blake v. Rich.

are required to assess them (Comp. Stat., p. 140, sec. 7,) and selectmen are required to assess the damages sustained by each owner of the land required for any highway laid out by them, (Comp. Stat., p. 136, sec. 16.)

In *Dearborn v. The Boston, Concord and Montreal Railroad*, 9 Foster 185, which was an appeal by a land-owner from the award of damages made to him by the railroad commissioners and selectmen, for land taken for the defendants' railroad, the court said: "The damages, then, which are to be found by a jury on the trial of a case like the one before us, are to be the same which selectmen would assess in a case of taking land for a highway." It would follow, most conclusively, that if the same damages are to be awarded, they must be given for the same injuries sustained, and none other, and that the same rights would be acquired in one case as in the other, as the consequence of the award.

The land-owner can maintain no action for the damages assessed to him, until after the corporation have entered upon the land taken, for the purpose of constructing a railroad thereon. Comp. Stat., p. 344, sec. 17. Why this provision, if, by the laying out of the railroad, anything more than the right of way, which might never be exercised, passed to the corporation? If the title and estate of the land-owner in the land were divested out of him by the acceptance of the report laying out the road and awarding damages, his right to compensation would be as perfect and his claim therefore as just and reasonable, before as after an entry upon the land for the construction of the railroad.

If the statutes had contained nothing further on the subject than the provisions to which we have already adverted, there could scarcely have been a doubt, that, upon the taking of land for a railroad, only an easement, or right of using the same for the purposes of a railroad, passed to the corporation, the fee remaining in the original owner. But the matter is not left thus. As if to remove every vestige of doubt, far more explicit terms are elsewhere employed on this subject.

By the statute under which the land was taken for the rail-

road, it was taken for the State, and not for the corporation, and taking the land on the same terms and conditions as the State, the land by the land owners of the State. The land dam acquired by the State. Then, upon the taking of the land by the governor of the State, the right to use and benefit the road, as they right so lease term. Comp. execution of the deposits with the damages assessed over which the case there is a and assessment defray the exp praised. Con

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Concord and Montreal Railroad, appeal by a land-owner from the action by the railroad commissioners for the defendants' railroad, the issues, which are to be found by a jury, are to be the same as in the one before us, are to be the same as in a case of taking land for a highway, most conclusively, that if the same damages must be given for the same taking, and that the same rights exist in the one, as the consequence in the other, as the consequence

in no action for the damages the corporation have entered upon the land for constructing a railroad thereon.

Why this provision, if, by the taking more than the right of way, the land, passed to the corporation? If the land-owner in the land were divested of the right of laying out the road for the right to compensation would be as if the report laying out the road was just and reasonable, before as after the construction of the railroad. And nothing further on the subject we have already adverted, there is no doubt, that, upon the taking of land for the right of using the same for a highway, or right of using the same for a highway, the fee reverts to the corporation, the fee reverts to the corporation.

But the matter is not left thus. There is no doubt, far more explicit terms are given. The land was taken for the rail-

road, it was not taken by the railroad corporation, but by the State, and no permanent right whatever in the land vested in the corporation under the proceedings for laying out the road and taking the land for its construction, until the State had leased the same to the corporation. In those sections defining the terms and conditions of the lease executed to the corporation by the State, the nature and extent of the interest acquired in the land by the laying out of the road, and the payment to the land-owners of the damages assessed, are very distinctly indicated. The land damages are paid by or for the State, and whatever is acquired by the whole proceedings first vests in the State. Then, upon the written application of the corporation therefor, the governor and council, by indenture of lease, under the seal of the State, signed by the governor and certified by the secretary of State, lease and guaranty to the corporation, for a term not less than one hundred nor more than two hundred years, "the right to construct a railroad over said land, for the public use and benefit, with the right of user in the same to pass and repass with their locomotives, cars and vehicles of transportation thereon, and for other usual and necessary purposes of a railroad, as they may be allowed to do by their charter." And the right so leased reverts to the State at the expiration of the term. Comp. Stat., pp. 345, 346, secs. 23, 24. Upon the execution of the lease, and before its delivery, the corporation deposits with the State a sum equal to the whole amount of damages assessed by the commissioners and selectmen for the land over which the railroad is to pass, or releases therefor; and in case there is any failure of title to the land by the first appraisal and assessment of damages, the railroad corporation is bound to defray the expenses of a reappraisal, and pay the damages reappraised. Comp. Stat., p. 346, secs. 26, 27.

Hardly any language could make clearer than these provisions the precise nature and extent of the interest acquired in the land by the laying out of the railroad. Whatever is acquired vests in the State, is by the State leased to the corporation on the receipt of what it cost, and upon the expiration of the

 Blake v. Rich.

term reverts in the State. The lease, therefore, accurately describes this interest. It is, in the language of the statute, simply a right to construct a railroad over the land, with the right of user in the same, to pass and repass with locomotives, cars and vehicles of transportation thereon, and for other usual and necessary purposes of a railroad. This is the whole interest in the land leased or acquired — a mere easement in the land, entirely compatible with the continuance of the fee in the original owner.

In *Dearborn v. Boston, Concord and Montreal Railroad*, before cited, although the precise question now under consideration was not raised, the court said, that, by the award of damages, "the corporation acquire the right to construct their road in any suitable and proper manner, for their own convenience and the public accommodation, and the right to vary and change that construction, within the established limits of the road, from time to time forever, until the State resume the right and privilege of the corporation, or until the charter be altered, repealed or annulled."

In *Northern Railroad v. Concord and Claremont Railroad*, 7 Foster 195, 196, it was holden that the easement of a railroad in the land over which it was laid out, received by a lease from the State, might be taken from it for the use and benefit of another railroad, upon the appraisal and payment of damages, in the same manner as in the case of a turnpike corporation, a toll bridge, or a ferry, the railroad for whose use it was taken, as well as that from which it was taken, being regarded as public highways under the laws of this State.

It has been holden in Vermont, that where the charter of a railroad corporation provided that the company, upon complying with the conditions on which they might take land for the use of their road, should be "seized and possessed of the land," this did not make them owners of the fee, but only gave them a right of way. *Quimby v. Vermont Central Railroad*, 23 Vt. (8 Washb.) 387.

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has been holden that the fee in lands taken vests in railroad corporations, all of which it is believed will be found to be based on the peculiar phraseology of the statutes authorizing the construction of the railroads and taking lands therefor; we are clearly of opinion, from the language of our statutes and the authorities cited, that under our laws a railroad corporation possesses under the lease from the State only an easement in the land over which its road may have been laid out and constructed, while the fee — the exclusive right of property — in the land, and in the trees and herbage upon its surface, and the minerals below it, subject always to the easement of the railroad corporation, remains in the original owner.

The instructions to the jury were consequently correct, and there must be

Judgment on the verdict.

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1870, the first passenger train came into Lancaster and this was a great convenience to Jefferson.

In 1870 the Brown Lumber Company of Whitefield began logging by railroad trains, the nearby timber having been cut. By placing a short piece of track from time to time as it was necessary to get near the timber, they wended their way onward into Jefferson, reaching Meadows in 1879. Passenger trains were run from the Meadows to Whitefield, with Manassah Perkins as conductor and George Hutchins as engineer. This was a full-sized lift to Jefferson people. Passenger service, freight service, express service and mail, in and out daily; it very soon came to be two trains each day.

The Whitefield-Jefferson Railroad kept on up the river for more timber. The B. C. & M. R. R. soon took over the road and in 1893 built through to Berlin. This gave the town a better market, as previous to this time it was a long hard trip to Berlin with a load, thirty-six to fifty miles to make a trip from different parts of town. The Highlands Station was built at the east end of the town. A spur road was built in 1892 to the Hill or Waumbek, which was another great convenience.

But the automobiles came and so strongly competed with the Railroad that the track was taken

up in 1921 when the roads were discontinuing service.

In 1889 the Main Central Railroad built a line from Québec Junction through Jefferson and on to connect with the Canadian road to give a direct short line to Québec. This established two stations, Baileys and Riverton, in town.

In the retrenchment of expense these stations are now flag stations, still a great convenience. The railroads always bring in the express and mail service.

The Whitefield & Jefferson logging road brought along with it the telephone to Meadows and an extension up to N. R. Perkins' house. Mr. Perkins had become a partner in the Brown Lumber Company and acted as surveyor to lay out the road as far as Meadows. Mr. Perkins had a general supervision of the logging and farming of the company.

A telegraph line was built from Lancaster to the Waumbek as early as 1865. This was received as a great convenience to the hotels and their patrons, as well as to the town in general.

In 1903 the Jefferson Telephone Company was organized in town, the shares being all subscribed by townsmen in lots of one or two. The Company leased phones of the Coos Company so as to be in connection with the latter company.

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PASSED JUNE SESSION, 1836.

CHAPTER CCXXXVII.

AN ACT to provide a more cheap and expeditious mode of assessing damages for lands or materials taken by Rail Road Corporations. A. D. 1836.

SECTION 1. *Be it enacted by the Senate and House of Representatives, in General Court convened,* That for the purpose of assessing the damages occasioned to the owners of lands or materials by reason of taking the same for the use of any Railroad Corporation that has been, or hereafter may be established under the authority of this State; there shall be a board of Commissioners for each county, consisting of three disinterested and competent persons in each county, one of whom shall be chairman, to be appointed by the Governor with the advice and consent of the council, and to hold their office for the term of two years.

Commissioners
to be appointed.

SEC. 2. *And be it further enacted,* That whenever any land or materials shall be taken as aforesaid, it shall be lawful for any owner thereof, or for said Corporation, to apply by petition to the Commissioners, for the county within which said land or materials may be situated to estimate the damages occasioned by reason of taking the same, and it shall be the duty of said Commissioners on such application to appoint a time and place for commencing the examination of such land or materials, and hearing the parties, of which time and place, notice in writing, signed by the chairman, or in case he shall be interested, refuse or be unable to officiate by reason of sickness or absence, by the

Owners may
apply to commissioners for
compensation.

Time of hearing to be appointed.

Notice given in writing to owners and to the corporation.

A. D. 1836.

other commissioners, shall be given to each of said owners and to said Corporation, in the same manner as is now provided by law, to be given by committee appointed by the Court of Common Pleas, to lay out highways.

Damages to be assessed.

SEC. 3. *And be it further enacted*, That at the time and place appointed, or at an adjournment of the same, the Commissioners shall proceed to commence the examination aforesaid, and to hear the parties; and shall assess the damages occasioned to each owner of land or materials, by reason of taking the same, and shall determine the time and mode of payment and their report under the hands of a majority, containing the names of the several owners, a description of the land or materials of each taken, the amount of damage awarded to each, and the time and mode of payment, being returned to the Court of Common Pleas next to be holden within and for the county in which such land or materials may be situated and duly accepted, shall be binding on the parties and final; *Provided*, however, that in case any one of said Commissioners shall refuse, be interested or unable to attend, it shall be lawful for the other two to proceed and act in the same manner as if all were present, and provided further, that no such application shall be sustained unless made within one year from the time such land or materials shall be taken as aforesaid.

Report to be made to the Court of Common Pleas.

Compensation to commissioners.

SEC. 4. *And be it further enacted*, That each of said Commissioners shall be allowed the sum of two dollars for each day actually and necessarily spent in such service, and five cents per mile travel to and from the place of examination, to be paid in all cases by such Corporation, together with such other legal and reasonable costs and charges as shall be allowed by said Court.

Application of this act.

SEC. 5. *And be it further enacted*, That this act shall apply to all Rail Road Corporations that have been or hereafter may be created under the authority of this state, and that all acts or parts of acts inconsistent with the foregoing provisions be and the same are hereby repealed.

Approved, June 16 1836.

CHAPTER CCXXXVIII.

AN ACT providing for the return of Inventories.

SECTION 1. *Be it enacted by the Senate and House of Representatives in General Court convened*, That the se-

lectmen of the several towns and places in this State, or a major part of them at the charge of the town or place to which they shall belong, shall transmit and return to the Secretary's office on or before the first day of November next, an entire inventory of the polls and rateable estates of the several towns and places within this State as taken in April the current year, and also an entire inventory of the polls and rateable estates of the several towns and places within this State as taken in April for the year next preceding the present year, which entire inventories shall each be footed and carried off into a column for that purpose, and the several footings so carried out added and the amount stated, which inventory shall contain all male polls from eighteen to seventy years of age to be valued at one dollar and fifty cents each, except idiots and paupers, and except such as are between the ages of eighteen and twenty one and enrolled in the militia—stallions or stud-horses kept for the use of mares that have been wintered three winters and upwards, each valued at ten dollars, and upon all rateable estate both real and personal, which is hereinafter mentioned, viz: polls, real estate including buildings, improved and unimproved land, whether owned by inhabitants or non residents, mills, carding machines, wharves and ferries, factory buildings and machinery, locks and canals, and toll bridges, to be assessed and inventoried in the town where the same may be located; stallions, horses, and mares, wintered four winters or upward; other horses and mares wintered two winters or upwards; jacks, jills and mules that have been wintered two winters or upward; other jacks, jills, and mules wintered four winters or upward; oxen wintered four winters or upward; cows wintered four winters or upward; all neat stock wintered two winters or upward; all sheep wintered one winter or upward; stock in trade whether of merchants, shopkeepers, tanners, curriers, blacksmiths, or other tradesmen, employed in the business of their trades, reckoning the same at the average value thereof for a year, bank stock, whether owned within or out of the State, provided the stock without the State be not taxed in the State in which the bank or banks be situated, money at interest more than the owner pays interest for, including money on hand or deposited in any bank, and all deposits in any savings bank or institution where the whole amount of deposits exceeds one hundred dollars also including all money loaned on or by virtue of any mortgage, pledge, bond or obligation, or note discounted, or any other security what-

A. D. 1836. Selectmen to return inventories to Secretary of State.

Rateable estate.

Supreme Court of New Hampshire CHESHIRE COUNTY.

PERRY v. KEENE

56 N.H. 514 (N.H. 1876)

PERRY v. KEENE.

Supreme Court of New Hampshire
CHESHIRE COUNTY.

Decided March 21, 1876.

Municipal aid to railroads.

The statute of this state (Gen. Stats., ch. 34, sec. 16), which authorizes towns to raise and appropriate money, c., to aid in the construction of a railroad, is not in conflict with the constitution.

BILL IN EQUITY, brought by certain tax-payers in Keene against the city and its officers, praying for an injunction to restrain them from levying a tax, or any other way raising or appropriating the money or credit of the city to aid in the construction of the Manchester Keene Railroad. The question came before this court on an agreed statement of facts, which sufficiently appear in the opinions.

Sargent Chase and Hardy, for the plaintiffs.

The legislature cannot lawfully interfere with private property, except in the following cases: (1) It may authorize it to be forfeited for crime, or sold for the owner's debts, judicially established. (2) It may take it for public use, under the power of eminent domain, on condition of just compensation; but for any private use the legislature cannot touch the property of the citizen, no matter how much compensation is made. (3) It may condemn it, under peculiar circumstances, under the police power, when the property itself, or its use or situation, endangers the public health or safety. (4) It may be taken by the taxing power.

Taxes are burdens or charges imposed by the legislature upon persons or property to raise money for public purposes, or to accomplish some governmental end; and without such public governmental use or purpose there can be no legal tax. The legislature has only the power to raise revenue by taxation for a public purpose, but when revenue is attempted to be raised for a purpose not connected with the public interest, it is no longer taxation, but robbery. *Hanson v. Vernon*, 27 Iowa 28 — opinion by DILLON, C.J. *515

It is also there held that railroad companies are private corporations in all respects, except so far as they may be empowered to exercise the right of eminent domain in taking land for railroad construction; that in all other respects they are private, and that their undertaking can no more be aided by taxation than can the undertakings of any other private corporation, or of an individual.

So, in *Whiting v. Sheboygan Railway Company*, 25 Wis. 167, — opinion by DIXON, C.J., — it is distinctly held that, as to the use of the land for the purpose of a highway, and the right of the public to pass and repass over it and enjoy its advantages upon the payment of reasonable fare and charges, the corporation may be said to be public, but in all other respects it is private. The road, with all its rolling-stock, buildings, fixtures, and other property pertaining to it, is private property, and operated and used by the company for the exclusive benefit and advantage of the stockholders. This constitutes a private corporation in the fullest sense of the term, and stands just like an institution of learning, or a manufacturing company, or any other private company or individual, who may be engaged in some employment or enterprise that is sup-

posed to be beneficial to the public: and a statute authorizing a tax for the sole purpose of making a gift of the money raised to a railway company, in which the state or the tax-payers have no ownership, is unconstitutional and void.

What is the meaning of the word tax? Webster says it is "a rate or sum of money assessed on the person or property of a citizen by government, for the use of the nation or state." They are "contributions paid by the inhabitants of a country for the use of the government." *New Am. Ency.*, vol. 15, p. 307; *Pray v. Northern Liberties*, 31 Pa. St. 69; *Cooley on Const. Lim.* 479, 487; *Camden v. Allen*, 2 Dutch. 398;

"A public governmental use or purpose is involved in and is essential to the idea of a tax" — *Hanson v. Vernon*, 27 Iowa 48, 49. "If the right to impose a tax exists, it is a right which in its nature acknowledges no limits," because the needs of the public, or the necessities of the government, can have no bounds set to them. "The power to tax involves the power to destroy," — that is, to levy a tax upon property equal to its full value. *McCulloch v. Maryland*, 4 Wheat. 431; *Bank v. New York City*, 2 Black 631; *Weston v. Charlestown*, 2 Pet. 449; *Cooley's Const. Lim.* 482, 483, and cases cited; *Sedgw. Const. Law* 554, 555.

So that, if the legislature have the constitutional right and power to authorize a tax of three per cent. to aid this railroad, or, in other words, to levy three per cent. upon their valuation and give it to the railroad without reserving any right whatever in the city to manage or control said road, then they have the constitutional right and power to levy a tax upon all the property in the city of Keene, equal to the full value of such property, and give that to the same road. In other words, the legislature might constitutionally authorize the bare majority in numbers of the legal voters in the city to give away every dollar of the property ^{*516} of every citizen in the city, without any consideration or any compensation or any equivalent whatever, so far as a large minority are concerned who are never to be

benefited by this road, but who, from the fact that they are already interested in other roads to which this new road is to be a rival, instead of being benefited, are to be in fact actually injured by such new road.

Private property can only be taken for public uses, and then only by the payment or the securing of a full compensation; but in this case the private property of these plaintiffs is taken not for a public use, but for one essentially private, and that without any compensation or equivalent. What this law does is simply to take the private property of A and give it to B without giving A any equivalent, simply because it is supposed, or claimed, that B, if he has the property, will make a use of it which will be more to the pecuniary advantage of the majority of the people than A would if he were left to do what he pleased with his own.

In the case of *Whiting v. Sheboygan Railway Company*, *supra*, C.J. DIXON considers and answers many of the arguments adduced in favor of the theory that railroads are public corporations, and therefore that money may be raised by taxation for their benefit.

1. It is assumed that whatever is a public use so as to justify the exercise of the power of eminent domain, is also a public use which will, under all circumstances, justify the exercise of the power of taxation. This position is proved fallacious, and fully answered. He shows, as does C.J. DILLON, in *Hanson v. Vernon*, p. 54, "that the taxing power and the right of eminent domain are, though in some respects kindred, essentially different."

2. Again: it has been said that property in the hands of these railroads is public property. This is shown to be false.

3. Again: it is said that a writ of mandamus will lie, at the instance of the state, to compel the company to build and operate the road, and that, when the public have such an interest, taxes may be levied. But this is all a mistake; no such power is shown to exist. In that case, and in this case, after the people of any particular

place have levied and paid their gratuity in the form of a tax, there is nothing in the act of incorporation, nor in any law in that state or this, to bind the company to run a single car over their road, or to prevent them from taking up the track and abandoning the use of their road altogether.

4. It is also said that a gratuity can be sustained on the same principle that subscriptions for stock in similar companies are sustained: but a broad distinction is shown between the two cases. But the power to do either is doubted, and has been questioned by high authority. Judge Redfield doubts the authority of these cases — nor does Judge Cooley approve of the doctrine. 2 Red. On Railways, sec. 230, note; Cooley's Const. Lim. 213, 214.

There is also the case of *The People v. Township Board of Salem*, 20 Mich. 452, in which Judge COOLEY delivered the opinion, in which he showed that railroads in all other respects, except in regard to the ^{*517} right of eminent domain, are private corporations just as much as manufacturing companies or institutions of learning; that their interests are all private, though their business may be supposed to subserve the public good and convenience, the same as the building of a saw-mill or the erection of a hotel, whether by a company or an individual, would be likely to do. Judge COOLEY'S reasoning seems entirely conclusive upon this subject, and his arguments are commended to the careful consideration of the court.

I also wish to call the attention of the court to a note of Judge Redfield's upon this opinion of Judge COOLEY, found in the Am. Law Rep., vol. 9 (new series), p. 501; as also to a note of the same judge upon the opinion of APPLETON, C.J., of the supreme court of Maine, in the case of *Allen v. Inhabitants of Jay*, as found in the Am. Law Rep., vol. 12 (new series), 493. In the last note, Judge Redfield refers to the case then recently decided, of *Lowell v. City of Boston*, in the supreme court of Massachusetts. He says, — "Public use and public good have been too often regarded as synony-

mous terms, and consequently it has been maintained by reasonably good lawyers and good judges, that taxation, which it is conceded on all hands can only be resorted to for public uses, might be made to contribute to the support of all objects which conduced to the public good." And he thinks that railroads have been largely subsidized by towns and cities from the public treasury, mainly upon this mistaken ground.

The difficulty has been to distinguish clearly between a "public use," and one that only remotely contributed to the public good by increasing the business, wealth, or prosperity of a town or city; and he concludes that there is no argument in favor of contributing by means of municipal taxation towards the creation or maintenance of a railroad which can rest upon any other plausible ground except that of the public good, in the broad sense of general improvement in wealth and business, as well as population and other kindred modes of general advancement; "and this argument," he says, "if we comprehend the matter rightly, applies equally well in favor of both the projects embraced in the cases stated in this note, the one for erecting a saw-mill, box factory, and grist-mill, and the other for advancing twenty millions for building the city of Boston." But still he thinks these projects were justly pronounced merely private enterprises, and hence that gratuities to railroads, like gratuities for building saw-mills and other manufactories, or loans to aid in rebuilding the city of Boston, are not for any public use, however much they may conduce to the public good or to the general prosperity.

On this same point, see, also, case of *Wapello Co.*, 13 Iowa 404; *Lafayette v. Cox* 5 Ind. 38; *Cooley's Const. Lim.*, ch. 14, p. 487, et seq.; *Veeder v. Lima*, 19 Wis. 280; *Thompson v. Pettson*, 59 Me. 545; *Tyson v. School Directors*, 51 Pa. St. 9; *Freeland v. Hastings*, 10 Allen 570; *Curtis v. Whipple*, 24 Wis. 350; *Bloodgood v. Railway Co.*, 18 Wend. 65; *Taylor v. Porter*, 4 Hill 140; *Sedgw. Const. Law* 174, 175, 515; *Jenkins v. Andover*, 103 Mass. 94; *Com. Nat. Bank v. City of Iola*, 2 Dill., C. C. R., 353; *Opinion of Judges*, 58

Me. 590, et seq.; *Allen v. Inhabitants of Jay*, 60 Me. 124; S.C., 12 Am. Law Rep. (N.S.) 481, and see note by Judge Redfield; *Lowell v. Boston*, 111 Mass. 454; *People v. Township Board of Salem*, 20 Mich. 472, and cases cited; S.C., 9 Am. Law. Rep. (N.S.) 487; *Whiting v. Sheboygan Railway Co.*, 25 Wis. 167, and cases cited; S.C., 9 Am. Law Rep. (N.S.) 156; *Hanson v. Vernon*, 27 Iowa 28, and cases cited; *King v. Wilson*, 1 Dill., C. C. R., 555; *Dill. Mun. Corp.*, sec. 105, pp. 586, 587.

By our constitution, the right of "acquiring, possessing, and protecting property" classed with the right of "enjoying and defending life and liberty;" and all these rights are declared to be the "natural, essential, and inherent rights" of the citizens of this state. Bill of Rights, art. 2. As a fundamental and essential right, the enjoyment and defence of life, liberty, and property are here put, by a special guaranty, above the altering or repealing power of the legislature. *Aldrich v. Wright*, 53 N.H. 399. "The power delegated by the constitution, 'to make and ordain all manner of reasonable and wholesome orders, laws,' c., confers no authority to make an order or law in plain violation of the fundamental principles of natural justice, though the act may not be prohibited by any express limitation in the constitution." *E. Kingston v. Towle*, 48 N.H. 57. "A law providing merely that the property of A should be taken from him and given to B, either with or without a consideration, would be repugnant to the constitution, — not, indeed, to the letter of any particular clause contained in it, but to its spirit and design, which, throughout the whole, discountenances the idea that the property of the citizen is held by any such uncertain tenure as the arbitrary discretion of the legislature in a matter of mere private right." *Concord Railroad v. Greeley*, 17 N.H. 47, 55; — and see authorities collected by DOE, J., in *Orr v. Quimby*, 54 N.H. 606, 607, 608, 609, 612, 613, 614, 615.

Looking at the constitution in the light of these and similar authorities bearing upon its construction and

true meaning, we cannot doubt that this statute, authorizing a majority of the legal voters of any town or city to take the property of all the minority without their consent and against their will, and give it away as a gratuity to an enterprise which is hostile to the interests of such minority, although not expressly prohibited by the letter of the constitution, is yet repugnant to its true spirit and intent as gathered from the whole instrument, and that such statute is and ought to be declared unconstitutional and void.

Lane, for the defendants.

The plaintiffs, in their petition for an injunction against the defendants, state that, December 11, 1874, the city councils of Keene passed the following joint resolutions (and this the defendants in their answer admit): *519

"Resolved by the city councils of the city of Keene as follows:

"That a sum equal to three per cent. on the last property valuation of the city of Keene, as made by the assessors thereof, be raised and appropriated as a gratuity to the Manchester Keene Railroad Company, to aid in the construction of that part of said railroad which shall be laid out and established between Greenfield in the county of Hillsborough, and the terminus at the city of Keene; and such sum is hereby appropriated for that purpose, provided that no part of said sum shall be paid, in money or bonds, or be liable to be paid as aforesaid, to said railroad company, until said road shall be completed for use from said Greenfield to said Keene, or until the city councils shall have satisfactory guaranty from responsible persons that it will be so completed on or before the first day of December, A. D. 1878, and the councils shall so determine by joint resolution; and the city hereby reserves to itself the right to pay said gratuity in bonds of the said city, like as hereinafter described, to be taken by said railroad at par in discharge of this obligation."

At the same time another resolution was passed relating to the character, amounts, c., of the bonds to be issued to raise the money.

Sec. 16, ch. 34, Gen. Stats., provides that "Any town may, by a two-thirds vote, raise by tax or loan such sum of money as they shall deem expedient, not exceeding five per cent. of the valuation thereof, as made by the assessors for the year in which said meeting is holden, and appropriate the same to aid in the construction of any railroad in this state, in such manner as they shall deem proper." Another provision of the statute extends this authority to cities as well as towns. And the positions understood to be claimed by the plaintiffs in this case are, that the law is unconstitutional and void, and the action of the city of Keene is without legal authority, validity, or force.

And the important question presented by the case is, whether the law, which authorizes towns and cities to raise and appropriate, in such manner as they shall deem expedient, a sum not exceeding five per cent. of its property valuation "to aid in the construction of railroads in this state," is unconstitutional and void. The petitioners ask for an injunction, on the ground that the law is unconstitutional, contrary to the principles of natural justice, and void; — and this claim is to be made out clearly and indisputably before an injunction will be granted. The presumption of law is that every act passed by the legislature, in the course of its legislative duties, is constitutional; and it devolves upon the plaintiffs not only to remove this presumption, but to remove "all reasonable doubt" of its constitutionality. The duty of the judiciary, when these questions come before it for consideration, seems to be well and clearly stated by the court in *Rich v. Flanders*, 39 N.H. 312, where it is said that "when courts are called upon to pronounce an act of legislation, passed with all the forms and solemnities requisite to give it the force of law, invalid and void in consequence of its conflicting with some constitutional provision, courts will approach the question with great caution, examine it in every possible aspect, and pon-

der upon ^{*520} it as long as deliberation and patient attention can throw any new light upon the subject, and will never declare a statute void unless the nullity and invalidity of the act are placed, in their judgment, beyond all reasonable doubt. *Cooper v. Telfar*, 4 Dall. 14; *Wellington's Petition*, 16 Pick. 95; *Lunt's case*, 6 Gr. 412;" — see, also, to the same effect, *College v. Woodward*, 1 N.H. 114; *Merrill v. Sherburne*, id. 202; *Walker v. Cincinnati*, 11 Am. Law Rep. 364; *McCulloch v. Maryland*, 4 Wheat. 316; *Ogden v. Saunders*, 12 Wheat. 260; *People v. Supervisors*, 17 N.Y. 241; *Olmstead v. Camp*, 33 Conn. 551; *Bankhead v. Brown*, 25 Ill. 540.

What measures are of a character that brings them within the fair meaning of the constitution authorizing them as public improvements for the public use is for the consideration and determination of courts; and this is the extent of their judicial duties. The legislature is the sole judge of the expediency of exercising the legitimate powers necessary to carry out these measures for use. *Railroad v. Greeley*, 17 N.H. 64; *Pet. Mt. Washington Road Co.*, 35 N.H. 140. In *Gilman v. Line Point*, 18 Cal. 225, the court say that "the only test and criterion of the admissibility of the power are, that the particular object tends to promote the general interest in its relation to any legitimate objects of government." In *Bradley v. R. R.*, 21 Conn., it is said that "the use is to be regarded as public if a general public benefit results from it." In *Fernald v. Company*, 47 N.H. 455, the court endorsed the foregoing definitions as representing the general doctrine upon this subject. It says that "it extends to all cases of general public utility." To the same point, also, are *Bristol v. Chester*, 3 N.H. 534, and *Hazen v. Essex Co.*, 12 Cush. 475. In fact, this liberal interpretation of the phrase "public use" has been almost universally maintained by courts for the advancement of the public welfare, physically and socially, in the spirit and by the improved means of the present age.

For this purpose lands are taken for highways, for turnpikes, canals, sewers, school-houses, parks, ceme-

teries, water-powers for mills and factories, and other like purposes, on the sole ground that they are for the public use. Not that they are an absolute necessity, or always of pressing importance; for some, and perhaps most of them, are not of this character, but are only well calculated generally to promote the pleasure, health, convenience, welfare, and prosperity of the community, and are demanded and allowed, to meet, in a reasonable manner, these needs and wants of a progressive people and age. For all these purposes not only private property is taken, but the public are taxed, or, rather, they generally tax themselves, through their town organizations, under the law. And not only is it constitutional and just, and fully sustained by public opinion as well as by the courts, to aid by public burdens all these measures for public pleasure, health, and prosperity, but a few years since it very properly assumed, to a considerable extent, burdens that rested upon a certain class of community to perform military duty, by raising money by taxation for substitutes, and for paying bounties to those who volunteered, though liable to be drafted. ^{*521} *Shackford v. Newton*, 46 N.H. 422. The "public use" is not of a limited and technical meaning, but, as regards the right of eminent domain and the power of taxation, is alike broad and general in its application.

The plaintiffs claim that this law, which authorizes towns and cities to raise and appropriate a limited amount of money by taxation to aid in the construction of railroads in this state, is unconstitutional, on the ground that railroads are of a private character and interest, rather than of a public nature. And if they are really and substantially of a private nature, and mainly conduce to private purposes, profits, and gains, instead of being principally of a public character, and required for public purposes, uses and ends, — for travel, for transportation, for communication, and transaction of business of all sorts between different places and sections of the country, having in these respects superseded mainly the common highway and the turnpike, — then there would seem to be some foundation for their claim; for no one pretends that a

law which would allow the majority in a town to raise money by taxation for the purpose of conferring a gratuity to a private person or a private corporation, for private rather than for a public benefit, would be constitutional.

The first question and the main question for consideration in solving this case, therefore, is, whether railroads, as authorized, constructed, and used in this state, are private concerns established by law, as their main object to promote private profits and gains, or are public enterprises, authorized and established for the public use and welfare. We contend that they are clearly of the latter character.

1. The statute laws of the state, from the earliest days of building railroads have indelibly stamped that character upon them and public opinion has fully sustained it. It is in this light only that private property and rights could be taken for their construction. They are declared by statute law to be "for the public accommodation like other highways, and at all times subject to the control of the legislature;" that "all railroad corporations are public, and those in whom they are vested are public agents, so far as the security and protection of the public rights and interests are concerned;" that, "being public highways, they can be laid out, built, maintained, and put in operation only by express grants of the legislature, or of authority derived from them." Gen. Stats., ch. 146, secs. 1, 2, 3. The proprietors are prohibited from selling, leasing, mortgaging, or discontinuing their road, without the consent of the legislature. Ch. 145 secs. 1, 2. In fact, the whole tenor of the laws relating to railroads, which are minute in detail, puts them entirely under the control of the legislature as public institutions, established and secured for public ends. The early history of the railroad agitations and discussions, which were sharp and able, resulted in the conviction of the public mind that they were necessary public improvements.

2. The decisions of our courts fully sustain the same views. It was authoritatively settled thirty years ago, in

the case of *Concord R. R. v. *522 Greeley*, 17 N.H. 47, that they were creations of the public power for the public use; and the same doctrine has ever been recognized as sound, and acted upon in legislation. *Marsh v. R. R. Co.*, 29 N.H. 37; *Company v. Fernald*, 47 N.H. 455; *Ash v. Cummings*, 5 N.H. 613; — see, also, to the same effect, *Cooley's Const. Lim.* 580, n. 2; *Walker v. Cincinnati*, 11 Am. Law Reg. 354. In every state in the Union, without exception, it is believed the laws authorize private property to be taken against the will of the owner, for a reasonable compensation, for the purpose of constructing railroads. And the right to exercise this power in this class of cases is invariably put upon the ground that railroads are of a public character, and constructed for the public use. No court has ever held that private property can be taken from one person and transferred to another as his private property. The exercise by government of the right of eminent domain is the employment of one of the highest attributes of sovereign power, and is ever done except for public purposes.

3. The uses made of railroads, and their influence not only upon the material prosperity of communities, but also upon their social character, show that they are preeminently of public interest and importance. All the internal business of the country is done upon railroads. The good old days of stage-coaches for pleasure, and of six-horse teams for freight, are gone by. A place beyond railroad facilities has no temptations for business or for social enjoyments, and is on the wane in every good sense. Its business gradually falls off, its property depreciates in value, its live, energetic citizens seek homes where the means of the present advanced state of civilization may be enjoyed, and the thriving homesteads of the past relapse into uncultivated wastes. No one can fail to see that railroads are a necessity to community; and if they are to be built hereafter, it is to be done by the direct aid of the community. The time has long since passed when railroad stock has been taken in new railroads as an investment for expected dividends. Roads which have been constructed for many years past have obtained their

means from towns and cities which would be directly benefited by them, and from additional means furnished by individuals, with the hope of incidental advantages that would result from their construction. Dividends from earnings have not been looked for, any more than would be done in laying out money for a common highway. And so it will be in the future. The public must aid largely in building them, or must go without them. Those who hope to be benefited must bear the burden. By a small tax, self-imposed, the public can be accommodated with railroads in other parts of the state where there are none now, which will add many times the amount of the outlay to the value of the property bearing the burden, and will increase the prosperity and population of the state.

4. It is a universally recognized rule of law, that states may levy taxes for the purpose of constructing and maintaining internal improvements. This has been done by all the states and by the general government.

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It is also a well settled doctrine, that the legislature may delegate authority to corporations, or to individuals, to execute and carry out public improvements, and may give them all the power necessary to accomplish these objects. *Lebanon v. Olcott*, 1 N.H. 339; *Pet. Mt. Washington Road Co.*, 35 N.H. 141; *Olmstead v. Camp*, 33 Conn. 532; *Bolton Mill Dam v. Newman*, 12 Pick. 467; *Armington v. Barnett*, 15 Vt. 750; *Ash v. Cummings*, 50 N.H. 612; *Company v. Fernald*, 47 N.H. 444; *Cooley's Const. Lim.* 537.

Besides the foregoing cases, Judge Cooley, in a note on page 119, cites more than fifty cases, decided in a large number of states, and by the supreme court of the United states, sustaining the same doctrine, where towns and cities had raised money by taxation and appropriated it for internal improvements, of which a large number were railroads; — see, also, 2 Red. on Railways 398, n. 9. I am not aware that the courts of more than one or two states, at the most, have uniformly held such laws unconstitutional when applied

to railroads. The courts of Wisconsin hold such a law unconstitutional; those of Michigan have also, by a divided court, held the same doctrine; and those of Iowa have held both ways in quite a number of different cases, the earlier decisions having sustained the law; but the later decisions, coming from a new court, have declared it unconstitutional and void. Everywhere else, so far as I have been able to learn, such laws have been sustained. But wherever they have been declared unconstitutional, it has been put upon the sole ground that railroads are of a private rather than of a public character; that they are institutions essentially for private ends and gains, rather than for public uses and benefits — a position in conflict with the general judgment of courts and of mankind, and which, it seems to me, is mistaken in fact and erroneous in theory. For, at the same time that they hold to this doctrine, they also hold that railroads are of a public character to an extent that fully justifies taking private property for public uses — a doctrine that, to our mind, covers the whole case; for nothing but the fact that it is required for the public use will justify taking private property against the owner's consent at all; and the whole current of authorities, and the common-sense of the thing itself, sustain unqualifiedly the doctrine that money may be raised by taxation and appropriated in the construction of improvements for the same purpose. It would seem to be as high a degree of encroachment upon or interference with private property to take a man's homestead from him and tax him with the rest of the public to raise the necessary funds to pay for it, as it would be to tax him upon his property in connection with the rest of the community for the purpose of raising means to aid in constructing and completing a public improvement.

In those cases where the public exercise the right of eminent domain directly through their municipal governments, — as in the case of highways, water-works, parks, cemeteries, and other public improvements, — the exercise of this right itself implies necessarily the further right, not only to raise by taxation the necessary funds to pay for the property ^{*524} taken

for these purposes, but also the right to raise additional means in the same way, to complete the improvement according to its intended design and purpose; and ever afterwards to keep it in proper repair. If the state should elect to build a railroad, which it evidently might do, the same sort and extent of burdens would be imposed upon the public, with the same general result as to the rights and benefits to the people. They secure the right barely to use the property so taken and improved, as long as it shall be retained for such purposes, and no longer. And it is intended that every person shall have an equal right and opportunity to use and enjoy these improvements, subject to such reasonable rules and regulations as their peculiarities require. So, when the public improvements are secured through individuals or corporations, which are, in such cases, to some extent the instruments and trustees of the public, the process is somewhat different, but the result, in the most important respects, is substantially the same.

In the case of railroads, for instance, the property is taken in the name of the corporation, and paid for by the corporation; and to meet this expense, and the expense of putting it in the condition required to answer the purpose for which it is taken, and of keeping it in suitable repair to meet the public wants in future, and for keeping it in all its departments in constant readiness for the use and accommodation of the public, the corporation is allowed to take a reasonable toll or charge of those who use it, as a substitute for the direct tax which is imposed on the public when the same improvement is made through the instrumentality of municipal corporations. And it is definitely settled in this state, and it is the general doctrine, that these circumstances, and the fact that individuals may have a private interest in it, do not change its public character — *Ash v. Cummings*, 50 N.H. 613, *Railroad v. Greeley*, 17 N.H. 59, *Company v. Fernald*, 47 N.H. 444, *Pet. Mt. Washington Road Co.*, 35 N.H. 140, *Cooley's Const. Lim.* 532; and in this latter case the public is secured to the same extent that it is in the former, to wit, to the reasonable use of the property, for the pur-

pose for which it is taken, until the corporation shall be discharged by law from keeping and maintaining such road "for the public accommodation, like other highways." It gains no rights, that can be sold or transferred as valuable property to others, in either case.

Nor can it change the character of the case, or the rights and privileges of the public, or the duties and obligations of the corporation, that, by the vote of the city, the amount appropriated is designated as a gratuity. It is not, in fact, a gift, and should not be considered by the parties as a gift for the benefit of the corporation, for the purpose, or with any intent or expectation, of making the stock a valuable dividend-paying stock to its subscribers. The voters did not so understand it, nor did the corporation, nor was such the design of the law. Its only purpose was, to enable a community to assist in securing to itself the advantages of a railroad, by rendering it a limited amount of assistance, where otherwise they must forego the benefit of such improvements. The ^{*525} tax-payers do not burden themselves and their neighbors with taxes for the sake of making a valuable present to a corporation, or to any individuals. It is not, in any sense, a gift: it is an investment by the public, in a public enterprise, for a specific purpose, and that purpose is the advancement of the material interests and social comforts of the community; — and the public has entire security for the accomplishment of its intentions, through the present laws, and by means of future legislation, if it should be required. Individuals subscribe for stock, and sink their capital for expected incidental advantages in return. The public have aided in the construction of several important local roads within the last few years, and, in this light, have found it a profitable investment.

And again: we have already shown that public improvements may be made directly by the state, or through the agency of municipal corporations or railroad corporations, and that, in either case, they possess the same legal character and qualities. Is there any sound reason, in the nature of an enterprise of

this kind, why these two methods may not be united, without changing their legal character? Could the fact that individuals might contribute to aid the public in a given case, or the fact that the public might aid a corporation in a certain case, deprive the enterprise of its public character? Could it possibly, on that ground — for there is no other — render that unconstitutional which, if done by either alone, would have been constitutional? The state may tax the public for the construction of public improvements. In many instances they have built, or aided, directly or indirectly, in building railroads. But a state is as much bound to regard the principles of the constitution, in disposing of the public money or in taxing the public, as it is in passing laws authorizing towns or cities to do the same thing for themselves. If the principles of the constitution will authorize the state to aid in these enterprises, because they are public rather than private, they will justify the state, for the same reason, in passing laws allowing towns and cities to contribute towards the same improvements. This view is supported in *Ash v. Cummings*, 50 N.H. 613, and cases cited.

6. We have already shown that it is a universal rule, that private property may be taken for railroad purposes, but that it cannot be taken for strictly private uses; and, also, that the extent to which laws may be passed, authorizing the exercise of the power of taxation to promote public improvements, is strictly and exclusively a legislative discretion, and partakes in no degree of a judicial character. If the object is of a public character and use, in the opinion of the courts, that is the end of their duty and jurisdiction in the matter.

Our courts hold railroads to be of a public character. This is within their authority. To enable them to be constructed, the legislature, in its discretion, has passed a law authorizing them to take private property for the purpose. This is one step. In the exercise of its further discretion, it has also passed another law, authorizing towns and cities to raise funds, by the usual modes of taxation imposed upon themselves, ^{*526} and appropriate them in aid of this public object; — and

this is the second step, and the natural and usual one in making public improvements. Without this power the right of eminent domain would be futile and worthless, for there is no other legal way of raising the necessary compensation for the property, or for improving it for the public use. The right of taxation, in fact, lies at the bottom of the right of eminent domain, for this right rests upon adequate compensation, which can be secured by the public only by taxation; — and this second step rests upon the same principle as the first, and can be justified upon the same ground. Judge Cooley says, that "the right of eminent domain rests substantially on the same foundation, as each implies the taking of private property for the public use, on compensation made." But the compensation is different in the two cases. When taxation takes money for the public use, the tax-payer receives, or is supposed to receive, his just compensation in the protection which the government affords his life, liberty, and property, and in the increase in the value of his possessions, by the use of which the government applies the money raised by the tax; and either of these benefits will support the burden. Cooley's Const. Lim. 497, 559; *People v. Mayor of Brooklyn*, 4 N.Y. 422; *Williams v. Mayor of Detroit*, 2 Mich. 565; *Stowell v. Cleveland*, 1 Ohio (N.S.) 126; *Railroad Co. v. Connelly*, 10 Ohio (N.S.) 165.

7. The same principle which authorizes private property to be taken, or public funds raised by taxation to be used, in making one kind of improvement, on the ground that it is required for the public use and promotes the public welfare, will also justify taking private property in the same way, for the purpose of making another and a different improvement which is required for the public use and prosperity. The different degrees of importance supposed to belong to different measures, which come within the provisions of the constitution as being of a private nature, do not, in any case, control legislative authority. They do not confer, limit, or affect legislative power: they are proper matters for legislative consideration, and may sometimes render the exercise of that power im-

politic, inexpedient, and unwise, but never unconstitutional.

8. That the law is constitutional is fully sustained by the decision of the supreme court of the United States in the case of *The Town of Queensboro' v. Culver*, 19 Wall. 83. This was an action originally brought in the circuit court of the United States for the northern district of New York, to recover the amount of interest warrants due on bonds which had been issued by the town of Queensboro', as a donation for building and operating a railroad to be built from Glen's Falls to the Saratoga Whitehall Railroad. The law required a board of commissioners to be appointed to borrow \$100,000, at a rate not exceeding seven per cent., on the bonds of the town, at not less than par; and the money they shall raise "shall be donated to such railroad corporation or association as has now or shall hereafter file articles of association to build and operate a road from the *527 village of Glen's Falls to the Saratoga Whitehall Railroad," provided that no bonds should be issued until the taxable electors had decided in favor of the proposition. The law also provided for the final payment of the bonds and interest by taxation. The main defence in the case was, that the law was unconstitutional. The circuit court held it constitutional, and the case was carried to the supreme court on error, where the decision was affirmed.

Mr. Justice STRONG, who delivered the opinion of the court, used the following language in relation to the constitutionality of the law: "In view of the numerous decisions made by the highest courts of most of the states, including New York, as also of those made by this court, it ought to be considered as settled, that a state legislature may authorize a municipal corporation to aid in the construction of a railroad, in the absence of any express constitutional prohibition of such legislative action. There is no such prohibition to be found in the constitution of New York, and the courts of that state have many times held that the legislature has power to authorize cities and towns to subscribe for stock of a railroad corporation, to incur

indebtedness for the subscription, and to impose taxes for the payment of the debt incurred. It is true, no case in the highest court of that state has determined the precise question now presented, namely, whether a municipal corporation may be empowered to donate its bonds to a railroad company, and collect taxes for the payment of the bonds; but subscriptions for stock, equally with donations, are outside of the ordinary purposes of such corporations, and the design of both is the same. It is to aid in the construction or maintenance of a public highway: it is for the promotion of a public use. The inducement to a subscription may be greater than the inducement to a donation. In the one case, there may be a hope of reimbursement by the stock obtained; in the other, there can be none such expectation. In both, however, the warrant for the exercise of the power is the same *. The legislative act * was not mandatory: it was merely enabling. It authorized the issue and donation of the bonds, if approved by a popular vote. It was a mere grant of power upon conditions, coupled with a prescription of the mode in which the power granted might be exercised. And that it was a constitutional exercise of legislative power must be considered as settled affirmatively by the decisions of this court in *Railroad Company v. The County of Otoe*, 16 Wall. 667, and *Olcott v. The Supervisors of Fond du Lac County*, id. 678. It cannot therefore be maintained, as contended by the plaintiff in error, that the statute under which the coupons in suit were issued was transgressive of the power vested in the legislature." There is no "express constitutional prohibition in the constitution" of New Hampshire "against such legislative action," more than there is in New York. In this respect, both are alike.

To the same point we also refer to the decision, by the same court, in the case of *The Township of Pine Grove v. Talcott*, 19 Wall. 666, which was carried up on a writ of error to the district court of the United States for the western district of Michigan. The suit was by *528 Talcott, against the town, to recover the amount of certain railroad bonds which it had issued to aid in the construction of a railroad from Kalama-

zoo to South Haven, both in Michigan. The law under which they were issued was substantially like that under consideration, authorizing towns "to pledge their aid in the construction of railroads," by loan or donation, with or without conditions, by a majority vote of its electors, not exceeding ten per cent. of the last valuation of its real and personal property. The constitutionality of the law was sustained by the circuit court, and the town carried the case, for error, to the supreme court, where the former decision was affirmed, and the former decisions of the state courts were overruled or disregarded. In the course of their opinion the court say, that "it is insisted that the validity of the statute has been determined by two judgments of the superior court of Michigan — *People v. Salem*, 20 Mich. 452, *Bay City v. State Treasurer*, 23 Mich. 499 — that we are bound to follow those adjudications. We have examined these cases with care, — with all respect for the eminent tribunal by which the judgments were pronounced, — and we must be permitted to say that they are not satisfactory to our minds. We think the dissenting opinion in the one first decided is unanswered. Similar laws have been passed in twenty-one states. In all of them but two it is believed their validity has been sustained by the highest local courts. It is not easy to resist such a current of reason and authority. The question belongs to the domain of general jurisprudence. In this class of cases, this court is not bound by the judgment of the court of the state where the cases arise."

Had these two cases come under our observation before we had completed the other portions of our brief, we should have referred to them on several other important points in this case, which they clearly sustain.

If reason and authority can ever settle a controverted question, it seems to me they have effectually done it in this case, in favor of the constitutionality of the law.

C. H. Burns, for the Manchester Keene Railroad.

The question which is raised in this case is, whether section 16 of the act relating to the powers and duties

of towns, — ch. 134 of the Gen. Stats., — authorizing towns and cities by a subsequent act) to raise money to aid in the construction of railroads, is constitutional. It seems almost idle to discuss this proposition, inasmuch as there is not only no "express constitutional prohibition in our constitution against such legislative action," but the people of New Hampshire long since deliberately passed upon the question as to whether there should be such a provision introduced into the fundamental law of the state, and they decided by popular vote that it should not be done.

The constitutional convention of 1850 was composed of some of the ablest lawyers in the state, and among the amendments to the constitution proposed by this convention was one "prohibiting towns from lending *529 money, giving their credit, or taking stock in any corporation." The constitution in this respect stood then precisely as it does now. In the opinion of this able body of representative men, chosen from all parts of the state, in order to prevent towns from "lending money, giving their credit, or taking stock in any corporation," it was necessary to amend the constitution. This shows conclusively how that assembly viewed this matter.

When the proposed amendment was submitted to the people, they decided by an overwhelming vote to retain the right under the constitution to pass just such an act as they did pass fourteen years later, and which is now, for the first time, I believe, attacked as unconstitutional. The amendment was rejected. The issue was then made and decided. The people regarded it as settled, and enacted the law to which objection is now made.

The attention of the court is called to what has been done under this statute. The city of Concord aided the Sugar River R. R. to the amount of \$50,000. The town of Newport voted an appropriation of five per cent. of its valuation to the same object; the town of Sunapee voted same amount; and Claremont aided the enterprise to the amount of \$100,000. The city of Manches-

ter voted \$50,000 to the Suncook Valley R. R., and Epsom and Pittsfield voted five per cent. each to the same purpose. The city of Nashua took stock in the Nashua Rochester R. R. to the amount of \$200,000, and Sandown gave \$20,000. The city of Nashua also gave a gratuity of \$15,000 to the Peterborough R. R., and Lyndeborough, \$3,000, Greenfield, \$10,000, and Francestown, \$6,250, to the same object. The town of Peterborough gave \$40,000, and Jaffrey five per cent. of its valuation, to the Monadnock R. R.

Thus it will be seen at a glance that great enterprises have resulted from the exercise of the authority granted by this statute, and that no inconsiderable portion of the people of this state are directly interested in the decision of this important question. These large appropriations have been made and expended in the belief that they were not only legal and proper, but actually necessary to the development and protection of these several localities.

It is not easy to estimate the harm that would result from now holding this statute bad, and subversive of constitutional right. To do this not only would the towns and cities above named be subjected to countless embarrassments, and perhaps litigation, but a fatal blow to the growth and prosperity of the state would most certainly be inflicted.

The policy of our courts has always been, and I trust always will be, not to disturb what has been done in good faith by the people at the ballot-box, or by the legislature in the exercise of its proper functions, unless it is shown, clearly and unmistakably, that such acts are contrary to reason, law, right, and precedent. The statute in question, I submit, is not only reasonable and right in spirit and purpose, but it is in accord with the popular sentiment of our people, as expressed in their laws and suffrages. It has the sanction of precedent as shown in numberless *530 decisions in many of the states of the Union, to which the attention of the court has been called in the defendants'

brief; and thus it would seem to be fortified on every side with all the essentials of sound legislation.

CHESHIRE COUNTY.

LADD, J.

"Any town may, by a two-thirds vote, raise by tax or loan such sum of money as they shall deem expedient, not exceeding five per cent. of the valuation thereof * * and appropriate the same to aid in the construction of any railroad in this state, in such manner as they shall deem proper." Gen. Stats., ch. 34, sec. 16. In accordance with the provisions of this statute, the inhabitants of the city of Keene have voted a subsidy equal to three per cent. of their last property valuation, to aid in the construction of that part of the Manchester Keene Railroad located between Greenfield and Keene. This sum, amounting to upwards of \$130,000, is called a "gratuity" in the vote. It is, in fact, an appropriation of that amount, to be raised by a public tax, to the purpose of building a railroad, with no equivalent except the expected benefits to be derived from the opening of such railroad. The plaintiffs, who are citizens and large tax-payers in Keene, contend that the legislature, in passing the act quoted above, transcended the limits of their constitutional power; that the action of the city in voting the gratuity is therefore without warrant of law; and they ask for an injunction to prevent the issuing of bonds or the levy of taxes in accordance with said vote.

The question we are thus called upon to consider is an important one, not only in its legal aspects, but in its practical bearing upon the rights and interests of these parties, as well as others in a similar situation, both tax-payers and holders of municipal bonds heretofore issued for a like purpose under the authority of the act in question.

In one view, the duty of the court is extremely plain and simple; in another, it is very delicate, and not free

from difficulty. We have not to inquire into the policy of the law, or, if the purpose be admitted to be public, whether the supposed public good to be attained was sufficient to justify the legislature in conferring upon two thirds of the legal voters of a town the power to devote not only their own property but that of the unwilling other third to such a purpose.

All mere questions of expediency, and all questions respecting the just operation of the law, within the limits prescribed by the constitution, were settled by the legislature when it was enacted. The court have only to place the statute and the constitution side by side, and say whether there is such a conflict between the two that they cannot stand together. If, upon such examination, there appears to be a conflict, and if the conflict is so clear and palpable as to leave no reasonable doubt that the legislature have undertaken to do what they were prohibited from doing by the constitution, the court cannot avoid the high though unwelcome duty of declaring the statute inoperative, because the constitution, and not the statute, is the paramount law; and the court must interpret and administer all the laws alike. *531

The learned counsel for the plaintiffs have not pointed out the particular part or clause of the constitution which they say is violated by this statute. Their position, however, is, that the act authorizes the taking of private property, under the name and guise of taxation, and appropriating it to a use that is really and essentially private; and that such a proceeding, being manifestly at war with those fundamental principles upon which the right of the citizen to be secure in the possession and enjoyment of his property depends, is in violation of all those provisions in the constitution established to guard and perpetuate that right. The proposition assumes this form; — the legislature are forbidden by the constitution to exact money from the people of the state under the name of taxes and apply it to a private purpose: this statute authorizes the act thus forbidden, and is therefore void. The first part of this proposition is admitted by the defendants,

and so we need not now inquire in what particular provision of the constitution the inhibition is to be found. Whether it rests upon the commonly received meaning and definition of the terms taxes, rates, assessments, c., used in the constitution, and the general guaranties of private property contained in the bill of rights; or whether, by a fair construction of Art. 5, the levying of all taxes, municipal as well as state, is limited to the purposes therein named, — viz., for the public service, in the necessary defence and support of the government of this state, and the protection and preservation of the subjects thereof, — is at present immaterial, inasmuch as we are to start with the assumption that taxes cannot be imposed or authorized by the legislature for any other than a public purpose.

Is the building of a railroad a public purpose? The legislature have undoubtedly passed their judgment on that question, and determined that it is. It is not to be denied that the levying of taxes is specially and entirely a legislative function, and the court are not to encroach upon the province of a coordinate branch of the government in the exercise of that power. Where is the line that divides the province of the court from that of the legislature in a matter of this sort? The court is to expound and administer the laws, and there the judicial function and duty end. How much of the question, whether a given object is public, lies within the province of the law, and how much in the domain of political science and statesmanship? When the judge has declared all the law that enters into the problem, how much is still left to the determination of the legislator? Admitting, as has indeed been more than intimated in this state (*Concord Railroad v. Greeley*, 17 N.H. 57), that it is for the court finally to determine whether the use is public, — what is the criterion? What are the rules which the law furnishes to the court wherewith to eliminate a true answer to the inquiry? In what respect does the question as presented to the court differ from the same question as presented to the legislature? If the court stop when they reach the borders of legislative ground, how far can they proceed?

If the legislature should take the property of A, or the property of all ^{*532} the tax-payers in the town of A, and hand it over, without consideration, without pretence of any public obligation or duty, to B, to be used by him in buying a farm, or building a house, or setting himself up in business, the case would be so clear that the common-sense of every one would at once say the limits of legislative power had been overstepped by a taking of private property, and devoting it to a private use. That is the broad ground upon which such cases as *Allen v. Jay*, 60 Me. 124, *Lowell v. Boston*, 111 Mass. 454, and *The citizens' Loan Association v. Topeka* Sup. Ct. U.S. (not yet reported) were decided. And yet, what rule of law do the courts find to aid them in thus revising the judgment of the legislature? Is it not clear that the question they pass upon is the same question as that decided by the legislature, and that they must determine it in the same way the legislature have done, simply by the exercise of reason and judgment? What is it that settles the character of a given purpose, in respect of its being public or otherwise? It has been said that for the legislature to declare a use public does not make it so — 17 N.H. 57; and the same may certainly be said with equal truth of a like declaration by the court. A judicial christening can no more affect the nature of the thing itself, than a legislative christening. Judging a priori, and without some knowledge of the wants of mankind when organized in communities and states, I do not quite understand how it could be predicated of any use, that it is "per se" public, as is said by DIXON, C.J., in *Whiting v. Sheboygan Railway Co.*, 9 Am. Law Rep. (N.S.) 161. Of light, air, water, etc., the common bounties of providence, it might, indeed, be said beforehand that they are in a very broad sense public; but it is not of such uses that we are speaking. Without knowledge of human nature, knowledge derived from experience and observation of what may be needful for the comfort, well-being, and prosperity of the people of a state advanced in civilization, — and knowledge, gained in the same way, as to what necessary conditions of their welfare will be supplied by private enterprise, and what will go unsupplied without inter-

ference by the state, — I do not see how any use could be said to be per se public, or how either a legislature, or a court, could form a judgment that would not be founded almost wholly upon theory and conjecture. No one doubts that the building and maintaining of our common highways is a public purpose. Why? Certainly for no other reason than that they furnish facilities for travel, the transmission of intelligence, and the transportation of goods. But why should the state take this matter under its fostering care, imposing upon the people a very great yearly burden in the shape of taxes for their support, any more than many others that might be mentioned, of equal and perhaps greater importance to its citizens? Is it of greater concern to the citizen that he should have a road to travel on, when he desires to visit his neighbor in the next town, or transport the products of his farm or of his factory to market and bring back the commodities for which they may be exchanged, than that he should have a mill to grind his corn, — a tanner, a shoemaker, and a tailor to manufacture his raw material into clothing, *533 wherewith his body may be covered? Doubtless highways are a great public benefit. Without them I suppose the whole state would soon return to its primal condition of a howling wilderness, fit only for the habitation of wild beasts and savages. How would it be if there were no mills for the manufacture of lumber, no joiners or masons to build houses, no manufacturers of cloth, no merchants or tradesmen to assist in the exchange of commodities? These suppositions may appear somewhat fanciful, but they illustrate the inquiry, Why is the building of roads to be regarded as a public service, while many other things equally necessary for the upholding of life, the security of property, the preservation of learning, morality, and religion, are by common consent regarded as private, and so left to the private enterprise of the citizens? The answer to this question, surely, is not to be found in any abstract principle of law. It is essentially a conclusion of fact and public policy, the result of an inquiry into the individual necessities of every member of the community which in the aggregate show the character and urgency of the public need), and the likelihood

that those necessities will be supplied without interference from the state. Obviously it bears a much closer resemblance to the deduction of a politician, than the application of a legal principle by a judge. Should it be found by experience that no person in the state would, voluntarily and unaided, establish and carry on any given trade or calling, necessary, and universally admitted to be necessary, for the upholding of life, the preservation of health, the maintenance of decency, order, and civilization among the people, would not the carrying on of such necessary trade or calling thereupon become a public purpose, for which the legislature might lawfully impose a tax?

Experience shows that highways would not be built, or, if built, would not be located in the right places with reference to convenient transit between distant points nor kept in suitable repair, but for the control assumed over the whole matter by the state; and so the state interferes, and establishes a system, and imposes an enormous burden upon the people in the shape of taxes, compelling them to supply themselves with what they certainly need, but need no more than they need shoes or bread, — and nobody ever complained that the interference was unauthorized, or the purpose other than a public one.

Enough has been said to show the delicate nature of the task imposed upon the court when they are called upon to revise the judgment of the legislature in a matter of this description. It is especially delicate for two reasons, — first, because the discretion of the legislature, with respect to the whole subject of levying taxes, is so very large, and their power so exclusive, that it is not always easy to say when the limits of that discretion and power have been passed; and, second, because the rule to be applied is furnished, not so much by the law as by those general considerations of public policy and political economy to which allusion has been made. I do not deny the power and duty of the court, when private rights of property are in question, to settle those *534 rights according to a just interpretation of the constitution; and the discharge of

that duty may involve a revision of the judgment of the legislature upon a question which, like this, partakes more or less of a political character. But before the court can reverse the judgment of the legislature and the executive, and declare a statute levying or authorizing a tax to be inoperative and void, a very clear case must be shown.

After the legislature and the executive have both decided that they purpose for which a tax is laid is public, nothing short of a moral certainty that a mistake has been made, can, in my judgment, warrant the court in overruling that decision, especially when nothing better can be set up in its place than the naked opinion of the court as to the character of the use proposed.

Certainly it is not for the court to shrink from the discharge of a constitutional duty; but, at the same time, it is not for this branch of the government to set an example of encroachment upon the province of the others. It is only the enunciation of a rule that is now elementary in the American states, to say that, before we can declare this law unconstitutional, we must be fully satisfied — satisfied beyond a reasonable doubt — that the purpose for which the tax is authorized is private and not public.

I have spoken incidentally of our common highways; and it has been said that their purpose is, to furnish to the public facilities for travel, for the transmission of intelligence, and the carrying of goods. No one will contend that to build and maintain them is not a public purpose. Indeed, the public nature of this use is so very obvious, that it has been classed among those said to be public per se (*Whiting v. Sheboygan Railway Co.*, supra), standing in need of no credentials from the court to entitle it to legislative recognition. Wherein does the use of a railroad differ? What public benefit can be mentioned, that comes from the building of a common road, that does not come, in kind if not in degree, from the building of a railroad? It is not necessary to enlarge upon the benefits of either: they are, doubtless, numerous and varied, — so numerous,

indeed, so interwoven with everything that distinguishes an intelligent, virtuous, rich, well organized, and well governed state, from a tribe of primitive barbarians, that an attempt to trace them all would be little less than an attempt to search out the sources of our civilization.

The point is, they are alike in kind; and when it is admitted that the construction of one class of roads is clearly, beyond all possibility of doubt, a public purpose, I cannot conceive upon what ground it is to be said that the construction of the other class is, beyond all reasonable doubt, a private purpose.

It is said that railroad corporations are private; that the roads are built and run for private gain; that the public can only enjoy the benefits offered by them upon payment of a toll, — and, therefore, their purpose is private. The short and conclusive answer to all this, in my mind, is, that the character of the agency employed does not and cannot *535 determine the nature of the end to be secured. To say of a railroad corporation that it is a private corporation, and therefore the construction of a railroad is a private purpose, seems to me, in truth, no more logical, if less absurd, than to say of any officer or agent of the state, — He is an individual, with all the private interests and private associations of other citizens; therefore the purpose of his office and of all his official acts is private. The argument, that because a toll is granted, therefore the purpose must be private, carried to its logical results, would certainly declare the purpose of a very large number of public offices in the state to be private, — among them the secretary of state, justices of the peace and of police courts, registers of probate, registers of deeds, sheriffs, clerks of the courts, town-clerks, etc., etc.

If the purpose is public, it makes no difference that the agent by whose hand it is to be attained is private. Nor, if the purpose were private, would it make any difference that a public agent was employed. The question, therefore, whether a railroad corporation is to be regarded as public, or private, or both, — that is, public

in one aspect and private in another, — seems to me quite immaterial, and that the decision of that question one way or the other does not advance the inquiry we have in hand.

It has been admitted by some, who have maintained with singular ability and zeal the position of the plaintiffs in this case, that the state might legally take into its own hands the whole matter of railroads within its limits; might build, equip, operate, and control them, making use of no intermediate agents in the business, — because in that case the people would remain owners of the property into which their money had been converted. With great deference, it seems to me, this is a concession of the very point in dispute. The form of the argument seems to be this: The state cannot levy a tax for a private purpose. (So much, all admit.) The building of a railroad is a private purpose; but the state may nevertheless levy a tax to build a railroad, provided the tax be large enough to carry through the whole enterprise without calling in the aid of any other agency; — or, to draw from the same premises the conclusion sought to be established here, the state cannot levy a tax for a private purpose. The state may levy a tax to wholly build, equip, and run a railroad; therefore the building of a railroad is a private purpose. This does not bear examination.

Another argument may be noticed here. It has been said by courts, whose decisions we are accustomed to regard with great respect, that, admitting the power of the legislature to authorize towns and cities to subscribe for stock in railroad corporations, and issue bonds or levy taxes in payment thereof, it does not follow that they call lawfully authorize the direct appropriation of the public funds to aid in the construction of a railroad where no stock is taken; because, in that event, no interest or ownership results to the town in the property of the corporation, and no voice in the control and management of its affairs is secured. I do not understand how this call be said by a court of law. Upon what ground can the legislature authorize the raising of a tax to ^{*536} pay for stock in a corporation

of any sort, unless the purchase of such stock will be a devotion of the public funds to a public service? It is a matter of common knowledge that the original stock in railroad corporations often becomes worthless, or nearly so; but whether such a result is to be apprehended or not, makes no difference, so far as I can see, with the argument. If the end in view is private and not public, the legislature might as well authorize a town to enter into copartnership with any private person, in the prosecution of any private enterprise or business, and furnish its stipulated proportion of the capital to be invested, by levying a tax, as to authorize it to purchase such stock, even were it likely to advance in value on their hands, and the people thus be gainers by the operation. Deny that the end is public, and at the same time admit that a tax may be levied for the purchase of the stock, and the inevitable conclusion appears to be, that towns may be authorized to engage in the private and perilous business of dealing in stocks, and so apply the public funds to a purpose as remote as any that can well be conceived from that permitted by the constitution, to say nothing of the fact that such investment must be made with a reasonable assurance that the money will be lost. Clearly, one or the other of these propositions must be changed; — either we must admit that the end in view is public, or deny the power to purchase stocks when the end in view is merely a private end.

It is said that the power to tax involves the power to destroy; and that this is true is well shown by the recent example of the state banks, whose existence was terminated by a tax of ten per cent. imposed by congress on their circulation. But how does this strengthen the position of the plaintiffs? They say that if the legislature have the constitutional right and power to authorize a tax of three per cent. to aid this railroad, they have the constitutional right and power to levy a tax upon all the property in the city of Keene equal to the full value of such property, and give that to the same road. Suppose this be granted, what does it prove as to the object for which the tax is laid? Is it not equally true that they might authorize a tax equal

to the full value of all the property in the city for the support of the public schools, the public highways, or any other object of a confessedly public nature? The suggestion plainly of no force in an inquiry as to the nature of the purpose for which a tax has been authorized or levied, for the reason that the supposed power of destruction is a necessary incident of the taxing power, and follows it whatever be the object for which it is put forth, whether public and legal, or private and illegal. It amounts to little more, in the present case, than the truism that any governmental power may be abused by the agent in whose hands it is reposed.

But if the question on which this case must turn has been rightly apprehended, I think it was decided more than thirty years ago, in the case of *Concord Railroad v. Greeley*, 17 N.H. 47, where it was held that a railroad is in general such a public use as affords just ground for the taking of private property, and appropriating it to that use. ^{*537}

A glance at the early legislation in this state, with reference to the taking of land for railroads against the owner's consent, is sufficient, without looking elsewhere, to show that, for several years before the case of *Concord Railroad v. Greeley* arose, much doubt was felt by the legislature and the people at large as to the existence of such a right, and a strong disposition is manifest to deny its exercise. The first charters to railroad corporations granted the light to lay out their road, and necessarily take land for that purpose — see Private Acts of 1835, pp. 201, 212, 223, 264, Private Acts of (June session) 1836, p. 341, Private Acts of 1837, p. 336, Private Acts of 1839, pp. 456, 470; and at the June session, 1836, a general law was passed, entitled "An act to provide a more cheap and expeditious mode of assessing damages for lands or materials taken by railroad corporations," which unequivocally recognizes the existence and validity of the right thus conferred by the charters. Public Acts, June session, 1836, p. 299. This act was repealed at the November session of the same year, and an act substituted in place of it covering the same general ground, but

more comprehensive and specific in its details, providing for an assessment of damages by jury in case the parties were not content with the award of the committee, c. Public Laws, Nov. sess., 1836, p. 248. It is noticeable, also, that at the November session, 1836, an act was passed authorizing the town of Concord to purchase and hold stock in the Concord Railroad Corporation, to an amount not exceeding thirty thousand dollars. Public Acts, Nov. sess., 1836, p. 316. But before 1840, for reasons that are well known but need not be stated here, the public mind became somewhat agitated upon the general subject of the legal relations borne by railroad corporations to the people and government of the state, and the rights and duties of such corporations, as well as the power of the legislature to appropriate private property to their use without the owner's consent. We accordingly find that, at the June session of that year, an act of a somewhat sweeping character was passed, whereby the acts of June, 1836, and January, 1837, in reference to the assessment of damages, and the act authorizing Concord to purchase and hold stock in the Concord Railroad, were all expressly repealed. And it was further enacted, "That from and after the passage of this act, it shall not be lawful for any corporation to take, use, or occupy any lands, without the consent of the owner thereof, unless the construction of the works contemplated in the act of incorporation shall have been commenced prior to the passage of this act." Laws of June session, 1840, ch. 498, p. 438.

At the November session of the same year another act was passed which, whether called forth by actual grievances or not, shows in a striking light the state of public sentiment and the temper of the legislature. It was enacted, "That from and after the fifteenth day of March, A. D. 1841, it shall be lawful for the owner or owners of any land, taken by any railroad corporation in the construction of their railroad, when such landowner shall not have been fully compensated for the same, on or before the fifteenth day of March, 1841, to remove the rails from ^{*538} said railroad, fence up the land, and take and retain possession of the same until

entire satisfaction is made to the owner or owners of the land thus taken." Laws of November session, 1840, Ch. 584, p. 504. This latter act was repealed by the Revised Statutes, which went into effect March 1, 1843; but the provision of the former, that no railroad corporation shall take any land for the use of such corporation without the consent of the owner thereof, was retained, and appears as sec. 1, ch. 142, Rev. Stats.

Things remained in this position until 1844, when an act was passed, entitled "An act to render railroad corporations public in certain cases, and constituting a board of railroad commissioners." Laws of November session, 1844, ch. 128. Section 8 of this act contains an elaborate provision for a lease under the seal of the state, signed by the governor and certified by the secretary of state, whereby the right to construct a railroad over the route proposed should be granted and guaranteed to the corporation, for a term not less than one hundred nor more than two hundred years, for the public use and benefit, with the right of user in the same to pass and repass with their locomotives, cars, and vehicles of transportation thereon, c., — a device for finding the way out of a dilemma which would not do discredit to the ingenious inventors of many of the legal fictions with which the common law still abounds.

The next year (1845) came the case of Concord Railroad v. Greeley, where the constitutional power of the legislature to authorize the taking of private property for such a use was strenuously denied. It is obvious, even without going outside the statutes just referred to for evidence, that this was a question which had seriously engaged the public mind, and one upon which opinions greatly differed. Under these circumstances, it was natural that the case should receive a careful examination by the court; and I think it may justly be said, that the opinion by Mr. Justice GILCHRIST is among the most valuable to be found upon the general subject of which it treats. He says, — "The constitution of this state is not so much a constitution delegating power, as a constitution regulating and re-

straining power. All power, in the largest terms applicable to such a subject, is conferred by the people, through the constitution, upon the general court, subject to the condition in its exercise that it shall pass no laws repugnant to the limitations and restrictions in the constitution." He considers the objection that the power of eminent domain cannot be exercised except through the medium of a public corporation, and says the question involved is, not what is a public and what is a private corporation, but whether this corporation be one that may hold the land of an individual for the public use. In considering the great question in the case, namely, whether the proposed use was public, he says, — "It is sufficient for this occasion to say that the use of a thing may be considered public, so far as to justify the exertion of the legislative prerogative in question, if it be devoted to the object of satisfying a reasonable pervading public demand for the facilities for travel, for transmission of intelligence and of commodities, not extraordinary as compared with those enjoyed ⁵³⁹ by communities of like pursuits. Such objects rank themselves in fact among the first duties of a government from the moment that it has secured itself against foreign aggression, and established tranquility within its own borders. Without these the citizen pines in seclusion. The bounties of nature and the fruits of his labor, which commerce would transmute into wealth, are wasted, and he provides himself, with difficulty if at all, with those things which embellish home and render its appropriate enjoyments possible."

I am not aware that the soundness of this decision has ever been questioned; certainly it has been acquiesced in and acted upon by the legislature and the people, as the undoubted law of the state ever since it was rendered. The legislature has again and again, in a variety of forms, directly and indirectly, declared the use to be public, and has jealously guarded against the possibility of an inference that the right thus to take land could be derived from any other source than the supreme law-making power of the state. Railroads are declared to be designed for the public accommodation like oth-

er highways, and therefore to be public; and it is said that, being public highways, they can be laid out, built, maintained, and put in operation only by virtue of grants of the legislature, or of authority derived from them. They are required, in times of war, insurrection, or invasion, to transport soldiers, munitions of war, and other property of the state, as well as soldiers, munitions of war, and other property of the United states, and the mails of the United states, at such rates as the governor and council shall impose if the parties do not agree. They are forbidden to discontinue their roads, and required to keep them in good repair, and discharge their duties in carrying passengers and freight agreeably to their proper object and purpose — Gen. Stats., chaps. 145, 146; besides, their charters are always carefully guarded to prevent an inference that they are not the creatures of the state, charged with public functions and subject to legislative control.

Undoubtedly a legislative declaration, that a given use is public, cannot be regarded as conclusive to all intents, without denying the power of the court to interpret the constitution; nevertheless it is true, that the creator of a thing may generally impose upon the work of his own hands such qualities and characteristics as he chooses; — and when we see that the legislature, in establishing railroad corporations, has always been so careful, not only to bestow upon them attributes and powers consistent with no other idea than that their purpose is public, but to lay upon them also obligations and duties which would be clearly unjust and arbitrary in any other view; and when, in addition to this, we find the statutes full of declarations that the use is a public use, it would seem that nothing which falls much short of absolute demonstration would warrant the court in holding that the use is, after all, private.

Thus far, indeed, the cases all agree. It is nowhere contended, and is not contended by the plaintiffs, that a railroad is not a public use in such sense that land, the private property of individuals, may be taken *540 for its construction. But a strenuous effort has been

made to distinguish between the nature of a public use that warrants the exercise of the power of eminent domain, and that which warrants the exercise of the taxing power in its behalf. Of course the use Which warrants the taking of land for a road-bed must be public, otherwise every charter granting that right, and every general law recognizing its existence and regulating the mode of its exercise, has been nothing less than an arbitrary and despotic interference by the legislature with private rights of property, in flagrant violation of Art. 12 of the bill of rights, as well as the other provisions of the constitution whereby those rights are secured.

The argument, then, admits that the use is public, but holds that it is not sufficiently public, or is not public in the particular way, to bring it within the category of objects for which taxes may be imposed: either in degree or kind, the public quality which it confessedly possesses falls short of that required by the constitution to justify an exercise of the taxing power.

It is incumbent on those who undertake to maintain this distinction, to point out clearly the differences on which it rests. An assertion that it does exist is not enough, nor is the argument advanced by a repetition of such assertion, even though made in confident and emphatic terms. What is the rule wherewith we are to determine when a given public use is of a character to warrant the exercise of one power and not the other? What is the principle to be applied? No one will contend that the power of eminent domain and the taxing power, though similar, are in all respects identical; but all agree that neither can be exercised except for a public end. Which is the higher power? or, in other words, which requires the greater public exigency to call it forth? What is the nature of those objects which lie on one side of the line, and what of those upon the other side? Where is the line to be drawn, and what are the reasons that determine its location? These are some of the questions not to be evaded, or met with much speech and ingenious ratiocination, but to be answered fairly and clearly, before a court can say that

the legislature have beyond all reasonable doubt transcended their constitutional powers in declaring that a use which is of such character, — that is, public in such sense that private property may be taken and appropriated in its behalf, — is also public in such sense that taxes may be levied in its behalf. In those cases to which we have been referred by the plaintiffs' counsel, where an attempt to do this is made, it does appear to me the failure has been rendered only more conspicuous by the eminent ability of those who have undertaken the task. And, after a most careful examination of those cases, if we were to hold that a railroad, being a public use for which the land of individuals may be taken against their consent, is not a public purpose for which taxes may be imposed, I should be utterly at loss what sound reason to give for the distinction, or in what terms to frame a rule to govern the future action of the legislature in cases of a like description.

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Unless the court are to stand between the people and their representatives and declare when the latter have misjudged in their deliberations, and set up limits to the legislative powers of the general court not found in the organic law of the state, it is clear to my mind that this law cannot be annulled by a judicial sentence or decree.

SMITH, J.

After the very full discussion by my brother LADD of the general principles upon which the decision of this case must rest, and in which I fully concur, I shall attempt to do but very little more than cite a few of the leading authorities which bear upon the questions we are considering, quoting freely therefrom so far as may be necessary to give a clear understanding of the view which the courts have taken of these questions.

We are asked to restrain the city of Keene from issuing its bonds to the amount of \$130,000, in aid of the construction of the Manchester Keene Railroad, pursuant to a vote of its city councils passed in the month

of November, 1874, upon the ground that chapter 34, section 16, of the General statutes, authorizing a town or city to raise, by tax or loan, money to aid in such construction, is an unconstitutional exercise of legislative power.

It is not claimed that the constitution of this state contains any express denial of power to the legislature to authorize a municipal corporation to aid in the construction of a railroad, and there is nothing from which such denial of power may be inferred. The plaintiffs, in argument, refer to article 2 of the bill of rights, by which the right of acquiring, possessing, and protecting property is guaranteed to every citizen, and is thus put above the altering or repealing power of the legislature. We are also referred to the fundamental rule laid down in *E. Kingston v. Towle*, 48 N.H. 57, that "the power delegated by the constitution `to make and ordain all manner of reasonable and wholesome orders, laws,' c., confers no authority to make an order or law in plain violation of the fundamental principles of natural justice, though the act may not be prohibited by any express limitation in the constitution." It may be conceded in the outlet, that what the plaintiffs claim in this respect is not disputed. If the statute in question is open to the objection that it is repugnant to the fundamental principles of natural justice, or infringes the natural, essential, and inherent right of a citizen to acquire, possess, and protect property, then it will be the duty of the court to declare the same unconstitutional. The only question, then, is, whether this statute in question is unconstitutional.

There is no presumption in favor of the unconstitutionality of a statute. On the contrary, the presumption is always the other way; and it devolves upon any one who would question it, to establish its unconstitutionality beyond reasonable doubt. *Cooley's Const. Lim.* 182, and numerous authorities cited in note 1.

The plaintiffs contend "that railroad corporations are private corporations in all respects, except so far as they may be empowered to *542 exercise the right of

eminent domain in taking land for its construction; that in all other respects they are private, and that their undertaking can no more be aided by taxation than can the undertakings of any other private corporation or individual."

General Statutes, ch. 146, sec. 1, declares that "Railroads, being designed for the public accommodation like other highways, are public, and at all times subject to the control of the legislature." "Section 2. All railroad corporations are public, and trustees and others in whom any railroad is vested are public agents, so far as the security and protection of the public rights and interests are concerned." "Section 3. Railroads, being public highways, can be laid out, built, maintained, and put in operation only by virtue of express grants of the legislature, or of authority derived therefrom."

These provisions of the statutes are so clearly nothing more than a reaffirmance of the law, as it has been uniformly held in the courts of this and nearly every other state in this Union, that it is idle to do more than cite a few of the vast number of authorities upon this point. The first decision in our state is that of *Concord Railroad v. Greeley* 17 N.H. 47, where, after a full discussion by GILCHRIST, J., it was held that a railroad is, in general, such a public use as affords just ground for the taking of private property and appropriating it to that use; and that a railroad of a private corporation, if for the use of the public, paying a toll to the owners, subject to be regulated by law, is such an object as to justify such appropriation of private property.

In *Great Falls Man'f'g Co. v. Fernald*, 47 N.H. 444, is an exhaustive opinion by PERLEY, C.J., where it was held that when property is taken for the public use it may be done by a general law, as in the case of highways, or by special acts, such as have been so often passed in reference to turnpike roads, railways, canals, aqueducts, c. It is not necessary that the right should pass directly to the public. It may be given to a corporation technically classed as private, provided the use

is of such general benefit as to give it a public character. When a given case falls within a class which is such in general nature and character that the legislature have power to take the right as for the public use, the court cannot inquire whether the power was discreetly exercised in such particular instance. *Pet. Mt. Washington Road Co.*, 35 N.H. 134; — see, also, the list of numerous acts incorporating canal and turnpike companies, and acts for the improvement of rivers, cited in the plaintiffs' brief in *Company v. Fernald*, p. 450.

In *Ash v. Cummings*, in an opinion by SARGENT, J., in which the doctrine of the above cases is cited with approval, the learned judge then adds, — "If it is constitutional to grant to a private company the right of thus taking property for public uses without the consent of the owner, it follows that it is none the less so to grant the same right to an individual, if it is done under similar restrictions and limitations, and subject to the same conditions. The use is just as public, and no more so, if the highway is built by a public corporation, or a private *543 company, or a single individual, provided the same road is built in each case, and subject to the same regulations and restrictions."

If anything more were needed to confirm this position, we need only refer to the case of *Olcott v. The Supervisors*, 16 Wall. 678, from which I quote, "that railroads, though constructed by private corporations and owned by them, are public highways, has been the doctrine of nearly all the courts ever since such conveniences for passage and transportation have had any existence. Very early a question arose whether a state's right of eminent domain could be exercised by a private corporation created for the purpose of constructing a railroad. Clearly it could not unless taking land for such a purpose by such an agency is taking land for public use. The right of eminent domain nowhere justifies taking property for a private use; yet it is a doctrine universally accepted, that a state legislature may authorize a private corporation to take land for the construction of such a road, making compensation

to the owner. What else does this doctrine mean, if not that building a railroad, though it be built by a private corporation, is an act done for a public use? And the reason why the use has always been held a public one is, that such a road is a highway, whether made by the government itself, or by the agency of corporate bodies, or even by individuals, when they obtain their power to construct it from legislative grant. It would be useless to cite the numerous decisions to this effect which have been made in the state courts. We may, however, refer to two or three, which exhibit fully not only the doctrine itself, but the reasons upon which it rests." *Beekman v. Saratoga Schenectady R. R. Co.*, 3 Paige 45; *Bloodgood v. Mohawk Hudson R. R. Co.*, 18 Wend. 1; *Worcester v. Railroad Co.*, 4 Met. 564.

"Whether the use of a railroad is a public or a private one depends in no measure upon the question who constructed it, or who owns it. It has never been considered a matter of any importance that the road was built by the agency of a private corporation. No matter who is, the agent, the function performed is that of the state. Though the ownership is private, the use is public. So turnpikes, bridges, ferries, I and canals, although made by individuals under public grants, or by companies, are regarded as publici juris. The right to exact tolls or charge freights is granted for a service to the public. The owners may be private companies, but they are compellable to permit the public to use their works in the manner in which such works can be used. That all persons may not put their cars upon the road, and use their own motive power, has no bearing upon the question whether the road is a public highway. It bears only upon the mode of use, of which the legislature is the exclusive judge."

Regarding this question then as firmly settled, we are led to another, which arises for the first time in this state, although it has been before courts of most of the other states of this Union, and settled almost uniformly one way, and that is, whether, if there be no constitutional prohibition of any sort, the legislature of New Hampshire can authorize a municipal corporation to

aid in the construction of a railroad by issuing ^{*544} bonds, or raising money by tax or loan, to be given as a gratuity, or loaned to such railroad corporation.

The provision of the statute is as follows: "Any town may by a two-thirds vote raise by tax or loan such sum of money as they shall deem expedient, not exceeding five per cent. of the valuation thereof as made by the assessors for the year in which said meeting is holden, and appropriate the same to aid in the construction of any railroad in this state, in such manner as they shall deem proper" — Gen. Stats., ch. 34, sec. 16. By another provision of the statute, this section is made applicable to cities when voted by a two-thirds vote of each branch of the city councils.

It is not claimed that there is any express prohibition of this power in the constitution of this state. Nor do I know of any grounds upon which such prohibition may be implied. It has been argued on behalf of the plaintiffs that "the legislature has only the power to raise revenue by taxation for a public purpose; but when revenue is attempted to be raised for a purpose not connected with the public interest, it is no longer taxation, but robbery." I should not be disposed to quarrel with any one who asserts this proposition, but I fail to see how it is applicable to this case. No one will assert that taxes may be imposed for a private use. But has it not been settled over and over again, in this and nearly every other state of the Union that the construction of a railroad by a company incorporated by a state for the purpose of building it, and endowed with the state's right of eminent domain, is a thing in which the state has, as such an interest? The legislature has reserved the right of altering, amending, or repealing the charter granted to the Manchester Keene Railroad. The legislature has the power to control and regulate it. It can define its use, and regulate its tolls and rates of transportation. If a work made by authority of the state, subject to its regulation, and having for its object an increase of public convenience, is to be regarded as ordinary private property, then the

long array of decisions above referred to must be laid aside as not only inapplicable, but useless.

In the constitutional convention held in this state in 1850, an amendment was adopted by the convention, and submitted to the people for ratification, which read as follows: "12. No town or incorporated place shall have the right, either directly or indirectly, to suffer their credit to be used for the especial benefit of any corporation, or to raise money for the purpose of loaning the same to any corporation, or for taking stock therein;" — see Journal of Convention. This amendment was rejected by the people. Not only did it fail to secure the requisite two-thirds vote, but the majority against it was very large. Although this is not conclusive evidence that the people understood that by defeating the proposed amendment they already possessed the power to do what the amendment proposed to prohibit, yet it affords very strong evidence that the people were unwilling to deprive themselves of the power, if the occasion should ever present itself when they might desire to exercise it. ^{*545}

This statute was first enacted in 1864. P. L., ch. 2,890, sec. 2. According to the defendants' brief, at least twelve cities and towns have aided in the construction of railroads under the provisions of this act, without their power so to do having been challenged until the present case. This fact in itself is not perhaps entitled to much weight, except as showing that from the large number of people interested in the result of this suit, this question deserves very careful consideration.

Upon a question of constitutional law, the decision of the supreme court of the United States is the decision of a court of last resort, and is therefore entitled to our most respectful consideration. Turning then to the reports of that court, the case of Railroad Company v. County of Otoe, 16 Wall. 667, is found to be precisely in point. The constitution of Nebraska contained no prohibition against the power of the legislature to authorize a county to issue bonds in aid of the construction of a railroad.

The county of Otoe, having been authorized by the legislature, issued bonds to the amount of \$150,000 in aid of the construction of a railroad. Certain of the coupons coming due, suit was brought to enforce their payment, which was resisted upon the ground that the legislature had not the constitutional power to grant such authority, and the case was carried by appeal to the supreme court of the United States. The opinion of the court was delivered by Mr. Justice STRONG, from which I quote: "Unless we close our eyes to what has again and again been decided by this court, and by the highest courts of most of the states, it would be difficult to discover any sufficient reason for holding that this act was transgressive of the power vested by the constitution of the state in the legislature. That the legislative power of the state has been conferred generally upon the legislature is not denied, and that all such power may be exercised by that body, except so far as it is expressly withheld, is a proposition which admits of no doubt. It is true that, in construing the Federal constitution congress must be held to have only those powers which are granted expressly, or by necessary implication; but the opposite rule is the one to be applied to the construction of a state constitution. The legislature of a state may exercise all powers which are properly legislative, unless they are forbidden by the state or national constitution. This a principle that has ever been called in question. If, then, the act we are considering was legislative in its character, it is incumbent upon those who deny its validity to show some prohibition in the constitution of the state against such legislation. And that it was an act of legislative power is not difficult to maintain. No one questions that the establishment and maintenance of highways, and the opening of facilities for access to markets, are within the province of every state legislature upon which has been conferred general legislative power. These things are necessarily done by law. The state may establish highways or avenues to market by its own direct action, or it may empower or direct one of its municipal divisions to establish them, or to assist in their construction. Indeed, it has been by such action that most of the ^{*546} highways of the

country have come into existence. They owe their being either to some general enactment of a state legislature, or to some law that authorized a municipal division of the state to construct and maintain them at its own expense. They are the creatures of law, whether they are common, county, or township roads, or turnpikes, or canals, or railways. And that authority given to a municipal corporation to aid in the construction of a turnpike, canal, or railroad, is a legitimate exercise of legislative power, unless the power is expressly denied, is not only plain in reason, but it is established by a number and weight of authorities beyond what can be adduced in support of almost any other legal proposition. The highest courts of the states have affirmed it in nearly a hundred decisions, and this court has asserted the same doctrine nearly a score of times. It is no longer open to debate."

In the same decision it is held that the prohibition, "that the property of no person shall be taken for public use without just compensation," has no reference to taxation. "If it has, then all taxation is forbidden, for 'just compensation' means pecuniary recompense to the person whose property is taken equivalent in value to the property. If a county is authorized to build a court-house, or a jail, and to impose taxes to defray the cost, private property is as truly taken for public use without compensation, as it is where the county is authorized to build a railroad or a turnpike, or to aid in the construction and to levy taxes for the expenditure. But it is taken in neither case in the constitutional sense: the restriction is upon the right of eminent domain, not upon the right of taxation."

"There is no solid ground of distinction between a subscription to stock, and an appropriation of money or credit. Both are for the purpose of aiding in the construction of the road; both are aimed at the same object, — securing a public advantage, obtaining a highway or an avenue to the markets of the country; both may be equally burdensome to the tax-payers of the country. * * That the legislature of the state might have granted aid directly to any railroad company, by

actual donation of money from its treasury, will not be controverted.

* * The security against abuse of power by a legislature in this direction is found in the wisdom and sense of propriety of its members, and in their responsibility to their constituents. But if a state can directly levy taxes to make donations to improvement companies, or to other objects, which in the judgment of its legislature it may be well to aid, it will be found difficult to maintain that it may not confer upon its municipal divisions power to do the same thing. Counties, cities, and towns exist only for the convenient administration of the government. Such organizations are instruments of the state created to carry out its will. When they are authorized or directed to levy a tax, or appropriate its proceeds, the state through them is doing indirectly what it might do directly. It is true, the burden of the duty may thus rest upon only a single political division; but the legislature has undoubted power to apportion a public burden among all the taxpayers of the ^{*547} state, or among those of a particular section. In its judgment, those of a single section may reap the principal benefit from a proposed expenditure, as from the construction of a road, a bridge, all almshouse, or a hospital. It is not unjust, therefore, that they should alone bear the burden. This subject has been so often discussed, and the principles we have asserted have been so thoroughly vindicated, that it seems to be needless to say more, or even to refer at large to the decisions. A few only are cited. *Blanding v. Burr*, 13 Cal. 348; *Guilford v. Supervisors, c.*, 3 Ker. 143; *Stewart v. Supervisors*, 30 Iowa 9; *Bank v. Augusta*, 49 Me. 507; *Railroad Co. v. Smith*, 62 Ill. 268."

This very clear and satisfactory opinion was followed by another at the same term, in *Olcott v. Supervisors*, 16 Wall. 678, in which the same doctrine was reiterated; and again, in *Queensboro' v. Culver*, 19 Wall. 83; and yet again, in *Pine Grove v. Talcott*, 19 Wall. 666, where it is said, — "Similar laws have been passed in twenty-one states. In all of them but two it is believed their validity has been sustained by the highest local

courts. It is not easy to resist such a current of reason and authority. The question belongs to the domain of general jurisprudence."

When a question is presented for our consideration, which, in the language of the supreme court of the United States, has been affirmed by the highest courts of the states "in nearly a hundred decisions," and in that court "nearly a score of times," I think we may well agree with that court that the question is "no longer open to debate," and I may well be excused from entering upon a discussion of its merits. I have therefore attempted but little beyond making use of some of the arguments adduced by that court, and clothed in the forcible language of the very eminent judge who delivered the opinion in *Railroad Company v. The County of Otoe*.

RAND, J., C.C.

I concur. I think the conclusion reached by my brethren is supported by unanswerable arguments, and by a weight of authority much greater than that which call be cited in support of the opposite conclusion.

Bill dismissed. *548

GENERAL LAWS OF NEW HAMPSHIRE, RESPECTING RAILROAD
AND OTHER CORPORATIONS.

An Act providing the mode of assessing land damages, passed June 16, 1836.

Chapter 237 of the Laws of 1836 contains the Act.

Sect. 1 provides that a Board of Commissioners for each county, consisting of three, shall be established, to hold their office for two years, for the purpose of assessing land damages.

Sect. 2 provides that any owner of land taken for railroad purposes shall apply by petition to said Commissioners, who shall appoint a time and place to hear the parties, as is provided in the case of highways.

Sect. 3 provides that at such hearing the Commissioners shall assess the damages, determine the time and mode of payment, and make a report of their proceedings to the Court of Common Pleas, which being accepted shall be final; two of the Commissioners may proceed, in case of interest, refusal, or inability to attend of the third; and such application must be made within one year from the time when the land was taken.

Sect. 4 defines the manner of compensating said Commissioners.

Sect. 5 provides that this Act shall apply to all railroads now or to be incorporated by this State, and repeals all Acts inconsistent with this Act.

An Act for the assessment of land damages passed January 13, 1837.

Chapter 280 of the Laws of 1836 contains the Act.

Sect. 1 provides that the owner of land taken for railroad purposes may petition the Court of Common Pleas, for the county, to have his damages assessed, and said Court shall thereupon appoint a Committee, in the same manner as in laying out highways, who shall appoint a time and place to hear the parties and examine the land in question.

Sect. 2 enacts that said Committee shall, on such hearing and examination, assess the damages, and make the report of the majority to the Court next to be holden for that county; which report, when accepted, shall be final; providing that two of said Committee may proceed, in the absence of the third, and that such application must be made within three years from the taking of the land.

Sect. 3 provides that any party aggrieved by the award of said Committee, may have a jury to determine the matter of his complaint, by petition to said Court, and the report of the Committee may be used as evidence before the jury.

Sect. 4 provides that two or more persons, applying for joint or several damages, may unite in the same petition.

Sect. 5 authorizes the representative of any petitioner, who shall have deceased, to appear and prosecute such petition, or the survivors of several petitioners, after due notice given to the representative of any one deceased and neglect to appear.

Sect. 6 provides that the jury may view the premises.

Sect. 7 provides that the Court may require the Railroad Company, on applying for a jury, to furnish security for such damages as may be assessed.

Sect. 8 authorizes any such Company after said Committee shall have made their estimate, to tender to the party the damages assessed and costs incurred, which shall be a bar to any further costs, unless the party on the final hearing shall recover a greater sum; and provides that said Company, if they apply for a jury, shall pay all additional costs, if the damages are not reduced.

Sect. 9 fixes the compensation of said Committee.

Sect. 10 makes this Act apply to all Railroad Companies that have been or may be chartered, and repeals all Acts inconsistent with it, particularly parts of that of the Concord Railroad Corporation, passed 1835, June 27; the Keene Railroad Company, passed 1835, June 27; the Boston and Maine Railroad, passed 1835, June 27; the Nashua and Lowell Railroad, passed 1835, June 23; and the Eastern Railroad in New Hampshire, passed 1836, June 18; relating to land being taken for purposes of construction, and the manner of estimating land damages; also the Act concerning assessment of damages, passed June 16, 1836.

Chapter 498 of the Laws of 1840 contains an Act relating to Railroads and other Corporations.

Sect. 1 repeals both the preceding Acts, excepting as to railroads not now completed, and requires that damages must be paid to the owners, before their land can be taken.

Sect. 2 repeals the Act authorizing the town of Concord to hold stock in this Company, passed January 14, 1837.

Sect. 3 provides that no Corporation shall take lands for works not already begun, without the consent of the owner.

Sect. 4 requires that every Railroad Corporation shall construct and maintain a fence on each side of and along the whole track, and in default thereof, may be proceeded against by injunction, excepting where they have paid for building and maintaining said fences, when the Corporation shall be responsible for their maintenance and repairs.

Sect. 5 repeals all Acts inconsistent with this Act.

Chapter 561 of the Laws of 1840 contains an Act relating to Railroads.

It provides that all Railroad Companies shall be liable for damages occasioned by fire or steam from their locomotives, and may effect insurance on any property against such risk, and in case of loss, receive the benefit thereof.

Chap. 563 of the Laws of 1840 contains an Act in addition to Chapter 498 of this year.

Sect. 1 provides that the doings of the Concord Railroad Corporation shall be considered a commencement of said road under their charter, they applying to the Court within the county for an appraisement of lands taken by them, when they cannot agree with the owner, and giving security for its value, and in default thereof being liable to injunction.

Sect. 2 repeals all Acts inconsistent with this Act.

Chapter 584 of the Laws of 1840 contains an Act relating to Railroad Corporations.

- Sect. 1 provides that after March 15, 1841, any owner of land taken for railroad purposes, not compensated before that time, may fence it up and retain possession thereof until satisfaction is made, first giving fifteen days' notice to the Clerk of the Railroad Corporation, unless before said March 15th said Corporation shall procure, at their expense, the appointment of a Committee by the Court of Common Pleas for that county, to award damages to the land owner, and shall have tendered to him the amount of their award.
- Sect. 2 requires that Clerks of Railroad Corporations shall notify land owners of their intention to make such application to the Court for a Committee, and provides that the owners may employ counsel, to be paid by the party making the application.
- Sect. 3 provides that if any land owner refuses such tender of damages, the Corporation may continue to use the land, the party having his remedy at law.

Chapter 512 of the Laws of 1841 contains an Act relating to Railroads.

- Sect. 1 provides that railroads shall secure all highways which they cross by erecting a bridge over or gates on both sides of them, as the town may by their vote direct; and if after due notice of such vote, any Railroad Company shall neglect for six months to comply therewith, the town may cause the rails to be removed, and forbid any engines or cars to run across the highway, until they shall so comply.
- Sect. 2 repeals all Acts, or parts of Acts, inconsistent herewith, excepting as to proceedings already commenced under them.

Chapter 5 of the Private Acts of 1841 contains an Act relating to Railroads.

- Sect. 1 authorizes any Railroad Corporation to make by-laws.
- Sect. 2 provides that any Railroad Company may contract with another for transportation of passengers and freight.
- Sect. 3 authorizes them to hold real estate to the amount of 5 per cent. on their capital stock.
- Sect. 4 repeals any clause in railroad charters, limiting their duration, reserving to the Legislature the power to repeal any charter.

Chapter 39 of the Revised Statutes, Sects. 4, 5, and 6, contains provisions respecting the taxation of railroad property.

Chapter 142 contains provisions respecting the mode of taking lands for railroad purposes, making compensation therefor, and the penalty for neglect thereof; also other provisions as to Railroad Corporations.

Chapter 146 has general provisions respecting Corporations; the liability of stockholders, the manner of enforcing their payment, the mode of transferring stock, the form of conducting proceedings at their meetings, and other provisions.

Chapter 183, Section 9, directs how process may be served on Corporations.

Chapter 215, Section 3, prescribes the punishment for obstructing the track of any railroad, or running rails therefrom.

Chapter 34, Sections 9, 10, and 11, of the Public Acts of 1843, contains amendments to Revised Statutes, Chapter 146.

An Act to render Railroad Corporations public in certain cases, and constituting a Board of Railroad Commissioners.

Chapter 128 of the Laws of 1844 contains this Act.

Sect. 1 provides that three Commissioners shall be appointed, one at each June Session of the Legislature, to hold their offices for the term of three years, and who shall be sworn to the faithful performance of their duties.

Sect. 2 authorizes the Governor and Council to remove them, for good cause, and fill vacancies.

Sect. 3 declares all Railroad Companies, now or hereafter to be chartered, and that shall be unable to agree with land owners as to their damages, public Corporations, provided they vote to accept this Act, at a meeting held for that purpose, and file in the office of the Secretary of State a copy of such vote.

Sect. 4 provides that any such Corporation, having accepted the provisions of this Act, may apply by petition to the Commissioners to survey their route, as prescribed in the charter; and if, after due public notice, and a hearing of all parties, the Commissioners shall decide against the petition, no further proceedings shall be had, unless an appeal is taken as is provided in Section 7; if they decide in favor of the petition, they shall seasonably report their decision to the Governor and Council, who shall, at their next session, decide concerning the Commissioners' report and transmit their decision to the Commissioners; and they, if such decision is unfavorable to the petition, shall proceed no further.

Sect. 5 directs the Commissioners, if such decision is favorable to the petition, on written application of the Corporation, to lay out the road, and in connection with the road Commissioners in each county, to assess the land damage, in the same manner, and subject to the same right of appeal, as is now provided, provided that the Corporation may make alterations in the route, and the same proceedings be had respecting such alterations.

Sect. 6 requires that said Commissioners shall make a report of the route laid out and land damages assessed, in the same manner as road Commissioners are required to, by Chapter 57 of Revised Statutes; but to the Governor and Council, and to be recorded by the Secretary of State; provided that damages be paid to land owners only in case of entry on the land, and that land shall not be entered upon until the damages assessed are paid, or tendered by the Commissioners, in behalf of the State.

Sect. 7 authorizes an appeal from the decision of the Commissioners, if adverse to laying out the road, to the Governor who shall, if necessary, hear the parties; and if for the public good, direct that the road be laid out.

Sect. 8 provides that the Governor, shall, on written application of said Corporation

loan, under seal of the State, the right to construct and use for transportation a railroad over said route, for not less than one hundred nor more than two hundred years, and at the expiration of that time such right to revert to the State; which lease may be renewed, subject to any restrictions the State may impose, or if it is not renewed, such corporation shall be compensated therefor.

Sect. 9 requires that the Corporation shall, before the delivery of such lease, deposit with the State treasurer a sum equal to the amount of damages assessed.

Sect. 10 provides that the State may, after twenty years, resume the right and privilege of the Corporation, by giving one year's notice and paying what it may not have received of the expenditure and 10 per cent. on such expenditures.

Sect. 11 requires that the Corporation shall keep accounts of receipts and expenditures and make annual reports thereof to the Commissioners, who shall communicate them to the Legislature; and if the receipts shall exceed 10 per cent. on the net expenditures, such excess shall be paid to the State.

Sect. 12 enacts that such Corporation shall transport for the State, in times of war, munitions of war and soldiers, free of charge; and at other times all property of the State and of the United States, at such rates as the Governor and Council shall impose.

Sect. 13 reserves to the Legislature the right to reduce the rates of toll, if the net income of the stock exceed 10 per cent.

Sect. 14 requires that all officers of the Corporation, excepting superintendents and those actually engaged on the road, shall pay the usual rates of toll.

Sect. 15 provides that they shall permit other locomotives and cars to be run on their road, on such terms as the Legislature shall prescribe, and subject to claims for damages.

Sect. 16 directs that the road shall be kept in good repair, and shall continue to transport passengers and freight, unless by consent of the Legislature; in default thereof, being liable to indictment and fine.

Sect. 17 provides that all Railroad Corporations shall keep a record of their doings, open to the inspection of the Legislature.

Sect. 18 requires that one of said Commissioners shall, at least once in each year, examine the records of each Corporation, their papers and property, and report them to the Governor.

Sect. 19 authorizes any such Commissioner to administer oaths to, and examine under oath, all officers or agents of such Corporations respecting its affairs.

Sect. 20 fixes the compensation of Commissioners, and provides that no one interested in any railroad Company shall hold that office, or holding it, shall continue therein.

Sect. 21 repeals all Acts inconsistent with this.

Sect. 22 enacts that this Act take effect from its passage.

Chapter 141 of the Public Acts of 1844 contains an Act amending Chapter 39 of the Revised Statutes.

It relates to the appraisement and taxation of real estate of railroad Corporations.

Chapter 227 of the General Laws of 1845 contains an Act in addition to the foregoing.

Sect. 1 provides, after a railroad shall have received the sanction of the railroad Commissioners, that it may be laid out at different times as they and the County

Commissioners shall decide, and damages assessed to land owners, and a lease granted of the first finished, after compliance with the requirements of law.

Sect. 2 enacts, after proceedings had as recited in Section 1, that notices of the time and place of laying out the route to land owners and the Selectmen, conformably to the above Act, and signed by the chairman of the railroad Commissioners, shall be sufficient to all land owners on the route described.

Sect. 3 provides that releases of damages from land owners, filed with the State treasurer, may be a substitute for the money required by said Act to be deposited, in all cases.

Sect. 4 provides that land damages must be paid or tendered, except as provided by Section 2 of Chapter 52 of the Revised Statutes, before entry can be made thereon by any Corporation, and that no action can be brought till after entry, except, that, in case of an appeal from the decision of the Commissioners, a Corporation, after giving or tendering security to the owner of land, may make entry thereon.

Sect. 5 declares that the words "road laid out" in Section 4 of the original Act shall be taken to mean "route surveyed."

Sect. 6 provides that any Corporation, having adopted the provisions of the original Act, and forwarded a notice thereof to the Secretary of State for publication, must advance the expenses of such publication, before it will be made.

Sect. 7 provides that this Act shall take effect from its passage.

Chapter 321 of the General Laws of 1846 contains an Act relating to Corporations.

Sect. 1 repeals Section 1 of Chapter 146, of the Revised Statutes.

Sect. 2 makes all Corporations, hereafter incorporated, or whose charters may be amended or repealed, liable to the provisions of this Act, and the stockholders and officers shall be personally liable as follows :

1st. They shall be jointly and severally liable for all the Company's debts or contracts, until the whole capital stock shall have been paid in, and a certificate thereof shall have been recorded in their place of business ; and no note or obligation of a stockholder, with or without security, shall be considered as payment of any part of the capital stock.

2d. If the capital be reduced, those stockholders, who shall vote for, or receive their share of, the stock so withdrawn, shall be liable, jointly and severally, for the payment of all debts contracted previously to recording the copy of the vote authorizing such reduction.

3d. Every such Company shall annually give notice to the Governor, signed by the President and a majority of Directors, of the amount of assessments voted and paid in, the debts due from and to said Corporation, and the value of their property and assets ; in neglect thereof, all the stockholders shall be jointly and severally liable for all debts existing, and that shall be contracted, until the giving of such notice.

4th. If the Directors of any Corporation, shall declare a dividend, when the Corporation is insolvent, or the payment of which would render it insolvent, they shall be jointly and severally liable, to the amount of such dividend, for debts existing, or afterwards contracted during their term of office ; absent Directors, or those objecting to the declaring such dividend, shall not be liable.

5th. No Corporation, other than banks, shall loan money to their stockholders ; if such loan be made, the officers making it, or assenting to it, shall be liable for debts contracted before the payment of the loan.

6th. The whole amount of debts of any Corporations, other than banks, shall not exceed one half of the stock paid in, under the liability therein mentioned.

7th. Affixes a penalty for any false return or certificate made by the officers of any Corporation.

Sect. 3 contains provisions respecting banks.

Sect. 4 prescribes the form of proceeding against Corporations.

Sect. 5 authorizes each stockholder to represent his shares by votes, not exceeding one eighth of the whole stock.

Sect. 6 provides that the Legislature may amend the charter of any Corporation, upon notice to them ; and may repeal a charter, for violation of its provisions.

Sect. 7 requires the charter of any such Corporation to be accepted within three years after its enactment ; or it shall be void.

Sect. 8 repeals all Acts inconsistent herewith.

Sect. 9 provides that this Act shall take effect immediately.

Chapter 324 of the General Laws of 1846 contains provisions respecting Corporations.

Sect. 1 authorizes Corporations to insert any number of shares in one certificate.

Sect. 2 provides that this Act shall take effect immediately.

Chapter 335 of the Laws of 1846 contains an Act in amendment of Chapter 142 of the Revised Statutes.

Sect. 1 provides that when any town shall require a railroad Corporation to secure, by a bridge or gates, a highway which they cross or intersect, said Corporation may, after thirty days' notice thereof, apply by petition to the Court of Common Pleas for the county, to cause an examination of said crossing to be made, after notice to the town ; and said Court shall thereupon refer said petition to the road Commissioners for the county, who shall hear the parties and report if further security is necessary.

Sect. 2 provides that the same proceedings as in Section 1 may be had, when a railroad Corporation think it expedient to erect bridges or gates at such crossings.

Sect. 3 requires that said Commissioners shall specify in their report if more land be necessary, provided notice be given to the land owners ; and if said report be accepted, said Corporations may take such land, after paying or tendering the damages, assessed as is hereafter provided.

Sect. 4 provides that, in all cases of persons suffering damages by reason of erecting said bridges or gates, said Commissioners shall hear the parties and assess their damages and make report thereof, on petition of the Corporation or of the land owner.

Sect. 5 requires that, when a land owner presents a petition as aforesaid, thirty days' notice, previous to the term of the Court at which it is to be heard, be given to the Corporation, and other proceedings be had as in the case of lands taken for highways.

Sect. 6 gives to any such petitioner the right to have a jury assess his damages, as in Revised Statutes, Chapter 51, Section 8.

Sect. 7 provides that said Court may render judgment and issue execution upon said Commissioners' report, where no sufficient objection appears ; shall appoint the time for constructing said bridges or gates ; and in case of a Corporation refusing

to comply with any order made in pursuance of this Act, the Superior Court may prohibit them from using their road.

Sect. 8 repeals all Acts inconsistent with this Act.

Sect. 9 provides that it take effect from its passage.

Chapter 485 of the General Laws of 1847 contains further provisions concerning Railroads.

Sect. 1 authorizes the railroad Commissioners to alter the route of any railroad, as therein provided.

Sect. 2 provides that such laying out shall be a discontinuance of that part of the road for which it is substituted.

Sect. 3 provides that the land owners, if damages previously awarded shall not have been paid, shall only have the actual damages sustained by law.

Sect. 4 requires said Commissioners to certify said damages to the town clerk.

Sect. 5 repeals all provisions inconsistent herewith.

Sect. 6 provides that this Act shall take effect immediately.

Chapter 486 of the General Laws of 1847 contains additional provisions.

Sect. 1 defines the mode of proceeding, where railroads are so built as to obstruct or injure any highway, private way, or bridge.

Sect. 2 provides that this Act shall take effect immediately.

Chapter 487 of the General Laws of 1847 contains additional provisions.

Sect. 1 repeals Section 6 of "An Act in amendment of the laws relating to Corporations," passed June Session, 1846.

Sect. 2 authorizes the Legislature to alter or repeal the charter of any Corporation, when expedient.

Sect. 3 repeals all Acts inconsistent herewith.

Sect. 4 provides that this Act shall take effect immediately.

Chapter 621 of the Public Laws of 1848 contains further provisions.

Sect. 1 provides that damages for land taken for any railroad, shall be assessed by the railroad Commissioners in conjunction with the Selectmen of the town.

Sect. 2 repeals Acts inconsistent herewith.

Chapter 709 of the Public Laws of 1848 contains additional provisions.

Sect. 1 requires every railroad Corporation, constituting a board of railroad Commissioners, to file with the Secretary of State, a copy of the record of such vote, to be published by him.

Sect. 2 repeals so much of Section 3, Chapter 128, of the Pamphlet Laws as is inconsistent herewith.

Sect. 3 provides that this Act shall take effect immediately.

Chapter 710 of the Public Laws of 1848 contains further provisions.

Sect. 1 repeals Section 2 of "An Act amending the Revised Statutes, approved July 1, 1843.

Sect. 2 provides that this Act shall take effect immediately.

Chapter 860 of the Public Laws of 1849 contains further provisions.

Sect. 1 prohibits any railroad Corporation from selling their stock below par.

Sect. 2 provides that the free sale thereof shall not be prohibited.

Sect. 3 provides that no person shall represent more than one fifth of the whole shares at any public meeting.

Sect. 4 prohibits a stockholder, who has not paid assessments on his shares, from voting at any meeting.

Sect. 5 repeals all laws inconsistent herewith.

Sect. 6 provides that this Act shall take effect immediately.

LAWS OF 1836, CHAP. 237.

An Act to provide a more cheap and expeditious mode of assessing damages for lands or materials taken by Railroad Corporations.

SECT. 1. *Be it enacted, &c.* That for the purpose of assessing the damages occasioned to the owners of lands or materials by reason of taking the same for the use of any railroad corporation that has been, or hereafter may be established under the authority of this State, there shall be a board of commissioners for each county, consisting of three disinterested and competent persons in each county, one of whom shall be chairman, to be appointed by the governor, with the advice and consent of the council, and to hold their office for the term of two years.

SECT. 2. That whenever any land or materials shall be taken as aforesaid, it shall be lawful for any owner thereof, or for said corporation, to apply by petition to the commissioners for the county within which said land or materials may be situated, to estimate the damages occasioned by reason of taking the same; and it shall be the duty of said commissioners, on such application, to appoint a time and place for commencing the examination of such land or materials, and hearing the parties; of which time and place, notice in writing, signed by the chairman, or in case he

shall be interested, refuse, or be unable to officiate by reason of sickness or absence, by the other commissioners, shall be given to each of said owners and to said corporation, in the same manner as is now provided by law to be given by committee appointed by the court of common pleas, to lay out highways.

SECT. 3. That at the time and place appointed, or at an adjournment of the same, the commissioners shall proceed to commence the examination aforesaid, and to hear the parties; and shall assess the damages occasioned to each owner of land or materials, by reason of taking the same, and shall determine the time and mode of payment, and their report, under the hands of a majority, containing the names of the several owners, a description of the land or materials of each taken, the amount of damage awarded to each, and the time and mode of payment, being returned to the court of common pleas next to be holden within and for the county in which such land or materials may be situated, and duly accepted, shall be binding on the parties, and final: *Provided, however,* that in case any one of said commissioners shall refuse, be interested, or unable to attend, it shall be lawful for the other two to proceed and act in the same manner as if all were present: *And provided further,* that no such application shall be sustained unless made within one year from the time such land or materials shall be taken as aforesaid.

SECT. 4. That each of said commissioners shall be allowed the sum of two dollars for each day actually and necessarily spent in such service, and five cents per mile travel to and from the place of examination, to be paid in all cases by such corporation, together with such other legal and reasonable costs and charges as shall be allowed by said court.

SECT. 5. That this Act shall apply to all railroad corporations that have been or hereafter may be created under the authority of this State, and that all Acts or parts of Acts inconsistent with the foregoing provisions, be and the same are hereby repealed. *Approved, June 16, 1836.*

LAWS OF 1836, CHAP. 280.

An Act providing for the assessment of damages for land taken for Railroad Corporations.

SECT. 1. *Be it enacted, &c.* That for the purpose of assessing the damages occasioned to the owners of lands, by reason of taking the

same for the use of railroad corporations, that have been or hereafter may be established, under the authority of this State, whenever any land shall be taken as aforesaid, it shall be lawful for the owners thereof, or for the corporation to apply, by petition, to the court of common pleas, within and for the county in which said lands may be situated, to settle the damages occasioned by reason of taking the same; whereupon it shall be the duty of said court to appoint a committee in the same manner as they shall be authorized by law, at the time the application shall be made, to appoint a committee for laying out highways, with instructions to examine the lands taken as aforesaid, hear the parties in interest, assess the damages, and report their doings to said court, at the next succeeding term thereof. And it shall be the duty of said committee, upon the receipt of the commission of their said appointment, to appoint a time and place of meeting for commencing the examination of such lands, and hearing the parties, of which time and place notice shall be given by said committee to the owners of land taken, in the same way and manner, as notice shall at the time of said proceeding, be required by law to be given to land owners, by committees appointed to lay out highways.

SECT. 2. That at the time and place appointed as aforesaid, or at an adjournment of the same, the said committee shall proceed to commence the examination aforesaid, and to hear the parties; and shall assess the damages occasioned to each owner of land, by reason of taking the same, in manner aforesaid, and make their report under the hands of a majority of said committee, containing the names of the several owners, a description of the lands of each taken, the amount of damages awarded to each owner, to the said court, next to be holden in and for the county in which said lands may be situated; which report, if accepted by said court, with the express consent of all the parties in interest, shall be final. *Provided however*, That in case any one of said committee shall refuse, be interested, or unable to attend, it shall be lawful for the other two to proceed and act in the same manner as if all were present; *and provided further*, that no such application shall be sustained, unless made within three years from the time such lands shall have been taken as aforesaid.

SECT. 3. That either party who may be aggrieved or in any wise dissatisfied with the estimate made by the committee, as aforesaid, may have a jury to determine the matter of his complaint, on application therefor, by petition, in writing, to the said court,

unless he should agree with the parties, adversely interested, to have the same determined by a committee to be appointed under the direction of the court, such application for a jury may be made at the same term of said court, at which the said report of the said road committee shall have been returned and acted upon, or at the next regular term of said court thereafter ; and no such application shall afterwards be received by said court. The report of the said road committee shall be permitted to go to the jury as evidence to be supported and rebutted by other legal testimony.

SECT. 4. That if two or more persons shall apply at the same time for joint or several damages, they may join in the same petition to the court ; and if several applications shall be pending at the same time, before the court for a jury to determine the damages, the court shall cause all such applications to be considered and determined by the same jury, and the costs shall be taxed either jointly or severally, as the court shall determine to be equitable.

SECT. 5. That no petition to the court for a jury, shall abate or be defeated, by reason of the death of the petitioner, but the executor or administrator, or the heirs or devisees (if they shall be the persons interested) may appear and prosecute such petition, or present a new petition, in the same manner and with the same effect as the original party might have done if living. And if, upon the death of one or more of several petitioners for a jury, the executors or administrators, heirs, or devisees of such petitioners, after due notice that such petition is pending, shall neglect to appear or to prosecute, the surviving petitioners may proceed in the same manner as if they only had made application for such jury.

SECT. 6. That the jurors shall view the premises whenever the court deem it expedient to send them out for that purpose.

SECT. 7. That when application for a jury shall be made to the Court to estimate the damages for land taken as aforesaid, the court shall, if requested by the owners thereof, require the said railroad company to give security, to the satisfaction of said court, for the payment of such damages as shall have been assessed by said road committee, or as probably may be assessed by the jury, for the land taken as aforesaid ; and all the right or authority of said corporations to enter upon or use said land, except for making surveys, shall be suspended until they shall give such security.

SECT. 8. That after the said road committee shall have made their estimate, as aforesaid, the said railroad corporations may ten-

der to the said owner or owners of land, the damages so estimated, in full satisfaction thereof; and if the said owner or owners shall refuse to receive the same, with costs to be taxed to that period, and shall apply for a jury as aforesaid, he or they shall pay all such costs as shall be caused by such application, arising after such tender, unless, upon the final hearing, he or they shall recover a greater amount of damages than the sum tendered; and if the said corporation shall apply for a jury, and upon a final hearing, the damages as estimated by the said road committee shall not be reduced, the said corporation shall pay all the costs occasioned by such application.

SECT. 9. That each of said road committee shall be allowed the sum of two dollars for each day actually and necessarily spent in such service, and five cents per mile travel to and from the place of examination, and a reasonable compensation for notifying the parties; to be paid in all cases by said corporations, and all such other just and legal costs as shall be allowed by said court.

SECT. 10. That this Act shall apply to all railroad corporations that have been or hereafter may be created under the authority of this State; and that all Acts and parts of Acts inconsistent with the foregoing provisions; also all the parts and portions of the following Acts, to wit: "An Act entitled an Act to incorporate the Concord Railroad Corporation, approved June 27, 1835" — also, "An Act entitled an Act to incorporate the Keene Railroad Company, approved June 27, 1835" — also, "An Act entitled an Act to incorporate the Boston and Maine Railroad, approved June 27, 1835" — also, "An Act entitled an Act to incorporate the Nashua and Lowell Railroad Corporation, approved June 23, 1835" — also, "An Act entitled an Act to incorporate the Eastern Railroad in New Hampshire, approved June 18, 1836" — which authorize and empower said corporations to take and hold as much land, (other than the six rods wide the whole length of the said roads) as may be necessary for stone and gravel for embankments, cuttings, walls, bridges, and abutments, for the proper construction of said railroads, without the consent of the owner or owners thereof, except so far as said parts and portions of said Acts authorize said corporations to take such lands, over six rods in width, as shall be necessary for suitably constructing embankments and excavations, and building bridges; in which cases said corporations may take so much land as may be necessary for those purposes, not exceeding four rods in width, in addition to said six rods, and not for any

purpose of procuring gravel, stone, or any other materials, — also, all such parts of said Acts as provide for estimating the damages to the owner or owners of lands and materials taken by said corporations, in manner aforesaid, and for the purpose aforesaid, and also the whole of an Act entitled “An Act to provide a more cheap and expeditious mode of assessing damages for lands and materials taken by railroad corporations, approved June 16, 1836” — be and the same are hereby repealed. *Approved, January 13, 1837.*

LAWS OF 1840, CHAP. 498.

An Act relating to Railroad and other Corporations.

SECT. 1. *Be it enacted, &c.* That the Act entitled “An Act providing for the assessment of damages for land taken for railroad corporations,” approved January 13, 1837, and the Act entitled “An Act to provide a more cheap and expeditious mode of assessing damages for lands or materials taken by railroad corporations,” approved June 16th, 1836, be, and the same hereby are repealed: *Provided*, that this Act shall not extend to any railroad which may have been completed prior to the passage of this Act; *and provided further*, that “if any railroad may have been commenced, and not completed prior to the passage of this Act, it shall be lawful for the corporation to proceed in the construction of the railroad agreeably to the provisions of the Acts hereby repealed, provided said corporation shall first pay, or cause to be paid to the owners of land all damages assessed agreeably to the provisions of said Acts; and no lands shall be taken, used, or occupied, except to survey the same, till the damages so assessed shall be paid to the owners thereof.

SECT. 2. That the Act entitled “An Act to authorize the town of Concord to purchase and hold stock in the Concord Railroad Corporation,” approved January 14, 1838, be and the same is hereby repealed.

SECT. 3. That from and after the passage of this Act, it shall not be lawful for any corporation to take, use, or occupy any lands without the consent of the owner thereof, unless the construction of the works contemplated in the Act of incorporation, shall have been commenced prior to the passage of this Act.

SECT. 4. That it shall be the duty of every railroad corporation,

to erect, or cause to be erected, and keep, or cause to be kept, in good and sufficient repair, a proper and sufficient fence on each side of the track, through the whole extent of the route; and should any railroad corporation fail to make and keep in repair any fence as aforesaid, any person may apply to the superior court for an injunction to stop the cars upon said railroad, till said fence be made, or repaired, as aforesaid; and said court is hereby authorized to issue the same.

Provided, That the provisions last aforesaid, shall not extend to cases where such corporations have already settled with and paid said owner or owners, for building and maintaining such fences.

Provided further, That said corporations shall be responsible for the maintenance and repairs of such fences, and may maintain any proper action to recover the expense thereof, of such person or persons who may have contracted with such corporations to erect and maintain such fences, upon their neglect or refusal so to do.

SECT. 5. That all Acts and parts of Acts inconsistent with this Act, be and the same are hereby repealed. *Approved, June 20, 1840.*

LAWS OF 1840, CHAP. 561.

An Act to render Railroad Corporations liable for damages by fire or steam.

Be it enacted, &c. That every railroad corporation or company now established, or which may hereafter be established within the limits of this State, shall be deemed and held liable to pay fully for all damages which shall hereafter accrue to any person or property within the same, by reason of fire or steam from any locomotive or other engine, used, or to be used upon said roads respectively, for purposes of transportation or otherwise: *Provided, however*, that the said railroad corporations are hereby empowered to effect insurance upon any property situate upon the line of said railroads belonging to individuals, and exposed to damage as aforesaid, for their own safety and benefit, and in case of loss as aforesaid, shall be entitled to all the benefits of such insurance, any law, usage, or custom to the contrary notwithstanding. *Approved, December 10, 1840.*

LAWS OF 1840, CHAP. 563.

An Act in addition to and explanatory of an Act relating to Railroad and other Corporations, passed June 20, 1840.

Whereas the Concord Railroad Corporation, prior to the passage of the Act aforesaid, had caused large sums of money to be raised by assessment on the capital stock of said corporation, had procured a survey of their route to be made, and filed a location of the same in the office of the secretary of state, and had done all other acts and things required by their charter, with a view to a construction of said road, and whereas doubts have arisen whether these are such a commencement of the road as was intended in the Act passed as aforesaid: therefore

SECT. 1. *Be it enacted, &c.* That said acts and doings of said corporation shall be considered a commencement of said road under their charter, within the meaning and intention of said Act of June 20, 1840, of which this is explanatory: *Provided*, That where, on account of land being owned by corporations or by individuals without the government, or for other cause, the proprietors of said railroad shall be unable to agree upon a purchase of land, in all such cases it shall be the duty of said railroad corporation to apply forthwith to the court within the county where the lands are situated, to cause the same to be appraised, and said court shall cause said corporation to file at once good and sufficient security, in specie or otherwise, equal to double the value of said land, and all damage that may accrue to the owner of the same, and in default of furnishing such security, agreeably to the order of said court, the said court shall issue an injunction against any further proceedings of said corporation, and said corporation shall be liable in treble damages for all injury they may have occasioned to the same.

SECT. 2. That all Acts and parts of Acts inconsistent with this Act, be and the same are hereby repealed. *Approved, December 23, 1840.*

LAWS OF 1840, CHAP. 584.

An Act relating to Railroad Corporations.

SECT. 1. *Be it enacted, &c.* That from and after the fifteenth day of March, A. D. 1841, it shall be lawful for the owner or own-

ers of any land taken by any railroad corporation in the construction of their railroad, when such land owner shall not have been fully compensated for the same, on or before the fifteenth day of March, 1841, to remove the rails from said railroad, fence up the land, and take and retain possession of the same until entire satisfaction is made to the owner or owners of the land thus taken: *Provided, however*, that said land owner or owners shall first notify, in writing, the clerk of said corporation of his or her intention of fencing up such land, and removing the rails therefrom, at least fifteen days prior to doing the same; *and provided further*, that if any railroad corporation, who shall have taken from any individual, his or her land for the construction of such railroad, shall, on or before the said fifteenth day of March, procure, at the expense of said corporation, the appointment of a committee by the justices of the court of common pleas, in the county where such railroad is located, to award the damages to the land owner or owners for land thus taken, and shall tender to such land owner or owners the amount of damages awarded by said committee, on or before said fifteenth day of March, then this Act shall be null and void, otherwise it shall remain in full force.

SECT. 2. That it shall be the duty of the clerk of any railroad corporation, which railroad corporation shall have taken from any individual his or her land in the construction of such railroad, and for which land such land owner or owners shall not have received full and ample compensation, to notify such land owner or owners of their intention to make application to the justices of said court for the appointment of a committee to award their respective damages; and the land owner or owners may in all cases employ counsel, who shall be paid by the party applying for the appointment of such committee.

SECT. 3. That if any owner or owners of land thus taken shall refuse, upon tender being made to them of the amount of damages awarded by the committee, to receive the same, then such railroad corporation may continue to use said land, and the party refusing to accept the award may have his remedy as is now provided by law. *Approved, December 23, 1840.*

LAWS OF 1841, CHAP. 612.

An Act relating to Railroads.

SECT. 1. *Be it enacted, &c.* That from and after passing this Act, the several towns in this State through which any railroad

passes be, and they are hereby empowered, at any legal town meeting, to direct that, at any place in such town where such railroad shall intersect or cross any highway, such place of crossing or intersection shall be either secured by a bridge over said railroad, or by the erection of gates on both sides of said highway, as the town may by their vote direct; and if, after due notice has been given of the vote of said town to the clerk of said railroad company, they, the said railroad company shall neglect, for the space of six months, to erect and complete to the satisfaction of the selectmen of said town, such bridges or gates according to the vote of said town, then the selectmen of said town shall order or cause to be removed the rails from the railroad, where it crosses the said public highway, and no engines or cars shall be permitted to run across said highway, until the vote of said town shall be complied with.

SECT. 2. That all acts or parts of acts which relate to railroads crossing public highways, or which are in any way inconsistent with the provisions of this Act, be, and the same are hereby repealed. *Provided, however,* that any action or process commenced under any former Acts may be prosecuted to final judgment the same as though this Act had not been passed. *Approved, July 3, 1841.*

LAWS OF 1841, CHAP. 5.

An Act relating to Railroads.

SECT. 1. *Be it enacted, &c.* That it shall be lawful for any railroad corporation to establish in their by-laws such day for their annual meetings as they shall think most convenient, any thing in their respective charters to the contrary notwithstanding.

SECT. 2. That any railroad corporation may contract with any other railroad corporation, for the transporting of passengers and freight, and the conducting of the business on their road.

SECT. 3. That the several railroad corporations in this State, where the authority is not already given them, may purchase, hold and convey real estate, near to or adjoining their respective roads, to any amount, not exceeding five per cent. on their capital stock.

SECT. 4. That any clause or clauses in the charter of any railroad corporation in this State, whereby the duration of such charter is limited to any specified number of years, be and the same are

hereby repealed. *Provided, however,* That the legislature may at any time, alter, amend, or repeal the charters of all railroad corporations whose duration was limited as aforesaid whenever in the opinion of the legislature the public good shall require it. *Approved, July 3, 1841.*

REVISED STATUTES, CHAP. 39.

SECT. 4. Every railroad corporation shall pay to the treasurer of the State on or before the second Wednesday of June annually, one per cent. on the value, on the first day of January preceding, of that part of its capital stock expended within this State, to be determined by the certificate of the justices of the superior court.

SECT. 5. The treasurer of said State shall assign and distribute in the month of June annually all sums so received by him, in the following manner :

1st. To the several towns in which any railroad may be located, one fourth of said one per cent. paid by said railroad corporation ; each town to receive in proportion to the capital stock expended therein for buildings and the right of way :

2d. To the several towns in this State in which stock in any railroad shall have been owned on the first day of the April next preceding, three fourths of the one per cent. paid by said corporation on the stock owned in such town, upon receiving from the selectmen thereof satisfactory evidence that the same was owned in said town on said first day of April ; said three fourths of one per cent. to be by the selectmen of the town receiving the same, appropriated in just proportions to the several purposes for which taxes are assessed upon the polls and estates of such stockholders within such town :

3d. The remainder for the use of the State.

SECT. 6. It shall be the duty of the agent of every such railroad corporation to transmit to the treasurer of the State, on or before the first day of June annually, a certified statement of the number of shares in such corporation owned in each town in this State on the first day of April annually, and by whom owned, and such other information as may be required to carry out the provisions of this and the two preceding sections.

REVISED STATUTES, CHAP. 142.

Of Railroad Corporations.

SECT. 1. No railroad corporation shall take any land for the use of such corporation, without the consent of the owner thereof.

SECT. 2. When the lands of any infant or other person under guardianship, shall be necessary for the construction of any railroad in this State, the guardian of such infant or other person may sell and convey such land or any right therein, so far as the same may be necessary, to the corporation for whose use such land may be required for such railroad, with the approbation and license of the judge of probate for the county in which such guardianship is instituted, and not otherwise.

SECT. 3. Any railroad corporation may purchase and hold real estate lying near to or adjoining such road, and may convey the same, to an amount not exceeding five per cent. of its capital stock.

SECT. 4. If any railroad shall intersect or cross any highway in any town in this State, such town may at any legal town meeting direct that such place of crossing or intersection shall be secured by a bridge over said road, or by the erection of gates on both sides of said highway, as the town may think expedient.

SECT. 5. If after due notice given of such vote to the clerk of such railroad corporation, such corporation shall neglect for the space of six months to erect and complete, to the satisfaction of the selectmen of such town, such bridge or gates according to the vote of the town as aforesaid, the selectmen may remove or cause to be removed the rails from such railroad where it crosses such public highway, and no engine or car shall be permitted to run across such highway, until the vote of the town shall be complied with.

SECT. 6. If any railroad corporation shall neglect to keep a sufficient and lawful fence on each side of their road, any person against whose land such fence is insufficient, may notify the agent of such corporation thereof, and if such fence shall not be made sufficient within twenty days after such notice, the owner of such land may make or repair such fence, and may thereupon recover of said corporation in an action of assumpsit, double the amount necessarily expended in making or repairing the same as aforesaid; *provided, however,* that the foregoing provisions of this section shall not apply to any case, where such corporation shall have settled with

and paid the owner of such land for building and maintaining such fence.

SECT. 7. If any person having been thus settled with and paid for keeping any such fence in repair, shall neglect so to do, such railroad corporation may make such repairs and recover the necessary expense thereof of the person liable.

SECT. 8. Every railroad corporation shall be liable for all damages which shall accrue to any person or property within this State, by fire or steam from any locomotive or other engine on such road.

SECT. 9. Every such corporation shall have an insurable interest in all property situated on the line of such road, and exposed to damage as aforesaid, and may effect insurance thereon for the benefit of such corporation.

SECT. 10. Any railroad corporation may contract with any other railroad corporation, for the transportation of freight or passengers, and the conducting of all business connected therewith on their road.

REVISED STATUTES, CHAP. 146.

General provisions respecting Corporations.

SECT. 1. In addition to the liabilities of incorporated companies in their corporate capacity, the stockholders of any such company having for its object a dividend of profits among its stockholders, which shall hereafter be incorporated or have its charter renewed, and the stockholders of any such company heretofore incorporated, whose charter is by law subject to alteration, amendment or repeal, shall be personally holden to pay the debts and civil liabilities of such company hereafter contracted or incurred, in the same manner and to the same extent as though the stock were owned, and the business transacted by the stockholders as unincorporated copartners, subject however to the exceptions and modifications hereinafter provided for.

SECT. 2. Proper actions of debt or assumpsit, for the collection of such debts or liabilities, may be commenced and prosecuted against any one or more of said stockholders, and such actions shall not be abated for the reason that the other stockholders are not joined as defendants in such suits.

SECT. 3. No suit against any stockholder, for the collection of

any such debt or liability, shall be commenced until after a legal demand of payment thereof shall have been made upon the company; and upon such demand being made, if the officers or stockholders of such company shall discharge such debt or liability, or expose unincumbered personal property of such company, liable to attachment, sufficient to satisfy such debt or liability and costs, so that the same may be attached in a suit against such company for the security of such debt or liability, then no suit shall be sustained thereon against the stockholders: and whenever the officers or stockholders of any such company upon which such demand shall have been made, shall not satisfy such debt or liability or expose such property as aforesaid, it shall be the duty of such officers forthwith to call a meeting of the stockholders of such company, and such company when so met shall provide means for the payment of such debt or liability, either by assessments upon the stockholders or otherwise, within sixty days from the time when such demand was made; and if such debt or liability shall not be discharged within said sixty days, a suit may be sustained against the stockholders as is provided in the preceding section; and if the officer or officers whose duty it may be to call such meeting, shall unreasonably neglect to call the same, they shall severally forfeit the sum of one thousand dollars, to be recovered in an action of debt by any person injured thereby.

SECT. 4. When any action shall be commenced against the stockholders of any bank, for recovering the amount of any bank bills issued by such bank, a declaration may be so framed as to embrace in the same count any number of such bills; and averments that such bills issued from and were put in circulation by such bank, and that the plaintiff was, prior to and at the time of the demands of payment above required, and still is the holder of the same, and a general statement of the denominations of such bills, giving the number of bills of each denomination, shall be a sufficient setting forth in the declaration of the liability of the bank to pay or redeem such bills, and a sufficient description of the bills; and one suit only shall be commenced by any person against any stockholder, for recovering the amount of all the bills holden by him at the time of commencing any such suit; and the stockholders so sued may be described in the writ or declaration as stockholders of such bank, and by their names and places of residence, which shall be sufficient without any further description or addition whatever.

SECT. 5. When any stockholder of such company shall have voluntarily paid any such debt or liability, after such demands, or when any such stockholder shall have been compelled by suit to pay any such debt or liability out of his own private property, he may have contribution from the other stockholders of such company for all payments so made by him, either by action for money paid, laid out and expended, or by a bill in equity at his election.

SECT. 6. Every such company hereafter created, within five days from the time when it shall be organized for business, shall cause to be delivered to the town clerk of the town in which the company has its principal place of business, or left at his dwelling house a list of the names and places of residence of all its stockholders, the number of shares owned by each, and the amount of capital actually paid in, in cash, by each stockholder, certified under oath by the cashier, clerk or one of the directors of the company to be a full and correct list thereof.

SECT. 7. From and after the time in which such list is required to be so left, no sale, transfer or assignment by any stockholder of his stock, shares or interest in the capital of such company, shall be good and effectual for the purpose of exonerating him from his personal responsibility, for the debts and liabilities of such company afterwards contracted or incurred, unless the same be in writing and recorded in the office of the town clerk of the town in which such principal place of business is located.

SECT. 8. It shall be the duty of every such town clerk to record and keep on file all such lists, and to record all deeds and instruments of sale, transfer and assignment of such stock, shares or interest, which may come to his hand for that purpose, for which service he shall be entitled to receive from the person or corporation requiring the service to be performed, the same fees allowed by law for recording mortgages of personal property.

SECT. 9. The record made as aforesaid of any such list, deed, or instrument, or a copy thereof certified by the town clerk of the town in which the same is recorded, shall be evidence in any action brought by the creditors of any such company against its stockholders, agreeably to the provisions of this chapter.

SECT. 10. If any such company shall neglect to deliver or cause to be delivered or left as aforesaid, the list or lists aforesaid, the company so neglecting shall forfeit for each day it shall so neglect, the sum of ten dollars, to be recovered by any person who will sue for the same.

SECT. 11. If any corporation other than a town shall fail to hold its annual meeting, or if no mode of calling a special meeting of such body politic or corporate is prescribed, the owner or owners of one twentieth part of the stock or property thereof may apply in writing to any justice of the peace, which application shall state the time, place and purposes of such meeting, to call a meeting of the members of said corporation.

SECT. 12. Such justice shall thereupon issue his warrant directed to any one of said applicants, requiring him to warn a meeting of such corporation, to meet at the time and place and for the purposes mentioned in such application, by publishing a copy of such application and warrant fourteen days, in the same manner as is provided for warning the annual meeting of said corporation, and such meeting and all business done thereat, shall be as valid as if held and done according to the charter and by-laws of such body corporate.

SECT. 13. No person shall be eligible to the office of clerk or cashier of any corporation, unless he is an inhabitant of this State, and every such clerk or cashier shall be sworn to the faithful discharge of his duties.

SECT. 14. The directors of any banking or railroad company shall not be less than five in number, and no cashier of any bank shall at the same time be a director thereof.

SECT. 15. The books of records of the votes and proceedings of any corporation in this State, including the books of the credits and debts of any bank and of the proceedings of the directors thereof, and also all evidences of debts due such bank, shall be subject to the inspection of every member or stockholder.

SECT. 16. The clerk of any corporation, when required by any member or stockholder, or any creditor thereof whose demand is due on payment or tender of the fees therefor, shall furnish a certified copy of any vote or record of such corporation which may be demanded.

SECT. 17. The fees for all copies furnished as aforesaid, shall be the same as are allowed to clerks of courts for making and certifying copies of records.

SECT. 18. The stockholders of any bank, at any legal meeting for that purpose, may give to any person the right of inspecting the books of the debts and credits, or of the proceedings of the directors of such bank, and of demanding copies thereof.

SECT. 19. If any clerk of any corporation after a demand of a

copy of any record aforesaid, and the payment or tender of the fees therefor, shall neglect or refuse for the space of seven days to furnish such copy, he shall forfeit for such offence a sum not exceeding one thousand dollars, to any member, stockholder or creditor who shall have demanded such copy.

SECT. 20. No member of any corporation in this State shall vote at any meeting thereof by proxy ; and each member present at any such meeting may give one vote for every share of which he is the bona fide and absolute owner, not exceeding ten, and one vote for every two shares of which he is such owner, over ten and not exceeding twenty, and no more.

SECT. 21. If any person shall fraudulently vote upon any share of which he is not the bona fide and absolute owner, or shall fraudulently procure or receive the transfer of any share for the purpose of voting thereon, he shall be punished by imprisonment not exceeding one year, or by fine not less than five hundred dollars, or by both ; but any person holding stock in any corporation as executor, administrator, guardian or trustee, shall represent the shares or stock in his hands at all meetings of the corporation, and may vote as stockholder, and any person who shall have pledged his stock as collateral security, may represent the same at such meetings, and may vote as a stockholder.

SECT. 22. No person holding stock as executor, administrator, guardian or trustee as aforesaid, and no person holding such stock as collateral security, shall be personally subject to any liabilities as a stockholder of such corporation ; but the person pledging such stock shall be liable as a stockholder, and the estate and funds in the hands of such executor, administrator, guardian, or trustee, shall be liable in his hands in like manner, and to the same extent, as the deceased testator or intestate, or the ward or the person interested in such trust fund, would have been if he had been living and competent to act, and had held the same stock in his own name.

SECT. 23. Any corporation whose powers may expire by express limitation or otherwise, on any day, may continue to be a body corporate for the space of three years* thereafter, for the purpose of prosecuting and defending suits, of receiving, holding, conveying, or transferring any estate real or personal, and of gradually closing and settling the concerns and dividing the capital stock of such body corporate, but not for continuing the business for which such corporation was established.

SECT. 24. Any corporation may, at any annual meeting thereof, alter the time of holding its annual meeting.

SECT. 25. Any president, director, or cashier of any bank, or any director, trustee, or agent of any other corporation who shall wilfully or fraudulently violate any of the provisions of this chapter, or of either of the preceding chapters of this title, shall upon conviction thereof be punished by confinement to hard labor not exceeding five years; or by fine not exceeding five thousand dollars, for each and every violation thereof, one half to the use of the prosecutor and the remainder to the use of the State.

SECT. 26. The legislature may alter, amend, or repeal the charter of any corporation or any law relating to corporations, whenever in their opinion the public good shall require the same; but such alteration, amendment, or repeal shall not take away or impair any remedy given against such corporation, its members or officers, for any liability which shall have been previously incurred.

SECT. 27. The provisions of this chapter shall not take effect, until after the expiration of six calendar months from the day of its approval by the governor.

REVISED STATUTES, CHAP. 183.

Of the service of writs.

SECT. 9. Any writ or process against any other corporation or body politic, may be served by leaving an attested copy thereof with the clerk, treasurer, or one of the directors, and in case of their absence from the State, with any principal member thereof, or with the agent, overseer or person having the care and control of the corporate property or part thereof, or leaving the same at the usual place of abode of either of them.

REVISED STATUTES, CHAP. 215.

Of Offences against Property.

SECT. 3. If any person shall wilfully and maliciously place any obstruction on the track of any railroad, or remove any rail therefrom, or in any way injure such railroad, or do any other thing thereto whereby the life of any person may be endangered, he shall be punished by solitary imprisonment not exceeding six

Real Estate Appraisal

Of a:
Small Office Building

Located at:
**208 Atlantic Avenue
North Hampton, NH**

Submitted November 1, 2012 to:
**Kennebunk Savings
104 Main Street
Kennebunk, Maine 04043**

Prepared by:
**Steven H. Berg, MAI, SRA
Sargent Consulting, Ltd.
Post Office Box 787
Portsmouth, NH 03802-0787
603-433-4494**



Town of North Hampton

New Hampshire 03862

ning Board of Adjustment

nley Knowles
es Mixter
n McLaren
hard Lynch

Case 82:22 - Jabez Realty Trust

NOTICE OF DECISION

You are hereby notified that the request of Jabez Realty Trust for a variance to Article IV, Section 405, of the zoning ordinance has been granted for the reasons given in the following resolution passed by a majority vote of the appointed members of the Zoning Board of Adjustment.

Resolved, see attached findings of fact.

Signed: _____
Stanley Knowles, Acting
Chairman, Board of
Adjustment

Date: August 27, 1982

TAP ORDER

SERVICE NUMBER **6190** ORDER NO. _____
DATE **8-10-82** W.O. OR ACCT. NUMBER **B404**
NEW SERVICE ☒ KILL SERVICE ☐ REPLACE SERVICE ☐
NEW SERVICE: **34** IN. TAP: **34** IN. **Copper** PIPE
OLD SERVICE: _____ IN. TAP: _____ IN. _____ PIPE
COMPANY OWNED ☐ ABANDONED ☐
COMPANY OWNED ☐ REMOVED ☐

OWNER JABEZ TRUST
LOCATION 208 Atlantic Ave.
LOT BLOCK MUNICIPALITY No. Hampton

DEVELOPMENT _____
RESIDENCE ☐ OTHER (SPECIFY) Former Train Station

QUAN.	SIZE	MATERIAL INSTALLED	COST
		SERVICE SADDLE	
		CORP. COCK	
		COPPER PIPE	
1	1"	CURB STOP PXP	
1		CURB BOX	
1	1/2"	Copper Tee	
1	1"	Corporation Adapter for Plastic	
4	1"	inserts	
		6814003	
		#6814003	
		MATERIAL SALVAGED	

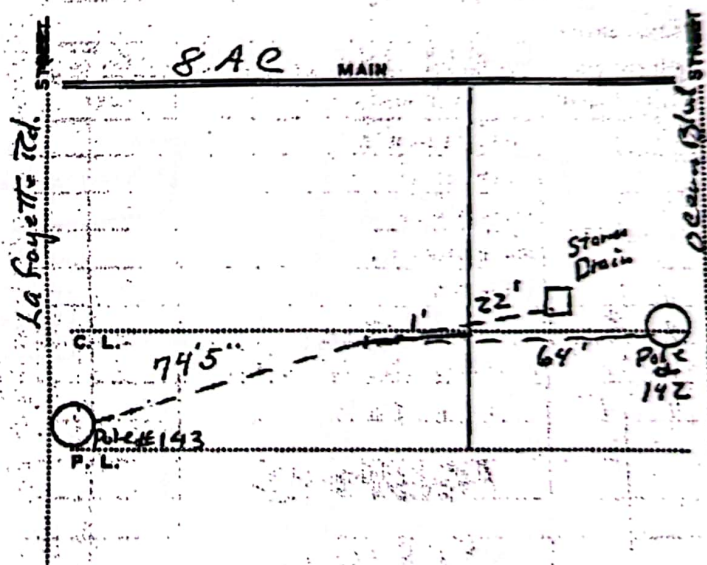
WORK COMPLETED 8-17-82 BY Ru

LOCATION DATA

TOP OF 8 IN. A.C. MAIN IS 5 FT. IN.
BELOW SURFACE, AND FT. IN. OF
CURB PROP. LINE ON Atlantic Ave.
TAP IS FT. IN. FROM INTERSECTING
CURB
MEDIAN LINE ON
DISTANCE, TAP TO METER PIT FT. IN.
CURB STOP FT. IN.
DISTANCE, CURB TO CURB STOP FT. IN.
LOCATION OF METER PIT
CURB BOX

DATA FURNISHED BY

DIAGRAM



Train Station

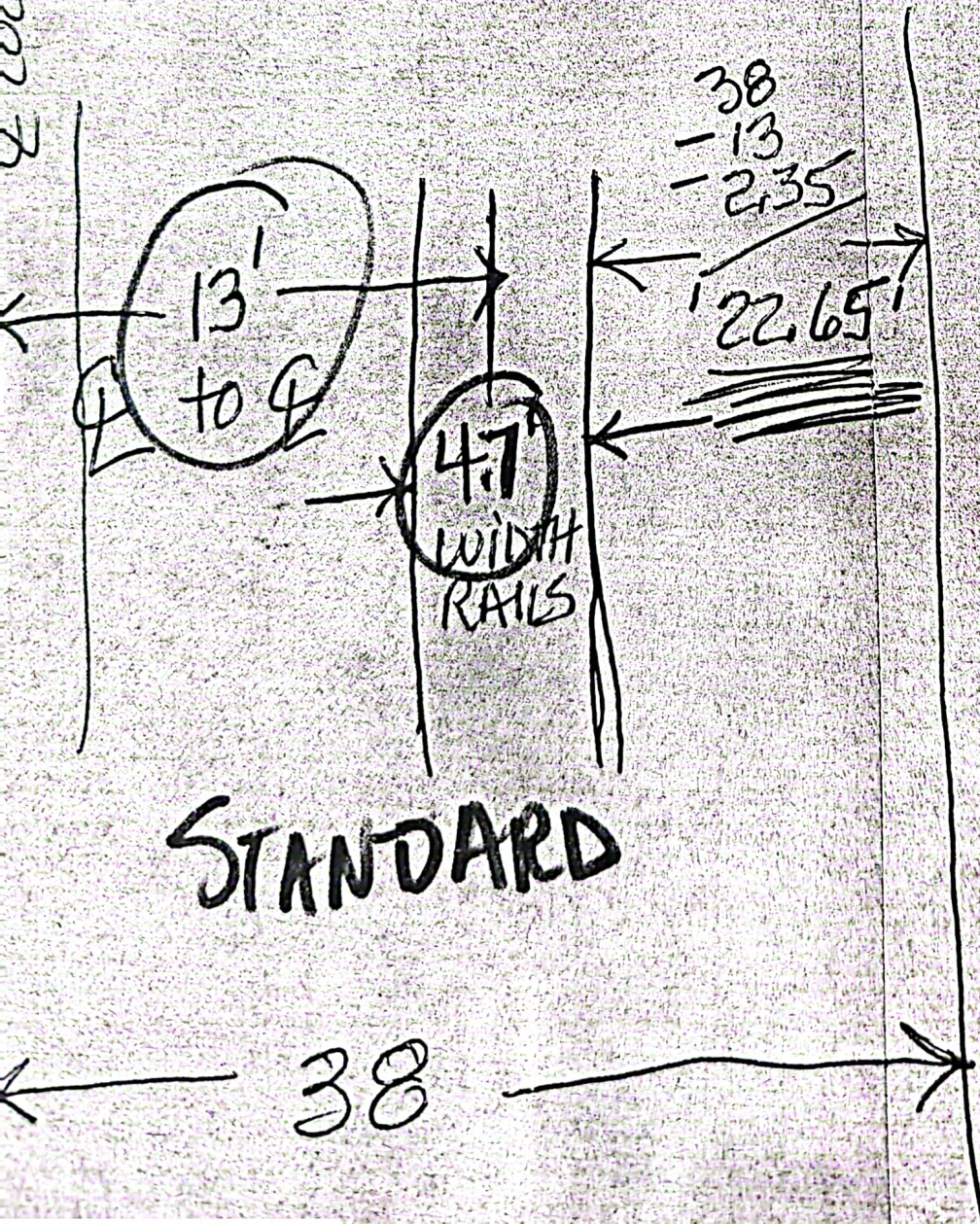
From 236

re: Hampton Depot

Spoke w/ Mike ~~Twidle~~ Twidle
Engineering GTI 508 663

200 = 4' 17K

38



CURVE DATA

PI = STA. 389+47.44
 Δ = 4°-38'-00.8", LT.
 D = 3'-00'-00"
 T = 77.27'
 L = 154.46'
 E = 1.56'
 R = 1909.859'

EQUATION: STA. 389+47.44
 1909.859' AT 1147' FROM

TOE OF SLOPE REVISED
 SEE CROSS SECTIONS

Kull, Joseph & Nancy W.

RUCI BERN WITH
 JAWAY CROSS SECTIONS
 8" AC Moh. (SEE NOTE 2)

Store

Approx. Existing R.O.W.

Paved Drive

Steel Sign Post with underground feed

House #210

STONE SLOPE

CLEARING LINE

Brush

Woods

9' Drive

Woods

Remove Well (Item 662)

Salvage Cover to Property Owner (Carter)

Remove and Reset Ornament Light (by others)

Brush

Paved

Wells

House Water Line Service Approx. Location

STAGING AREA

Boston and Maine Corp.

White, James C. & Kathie A.

2 1/2-Story House #223

Paved

Barn

Paved

Gravel Drive

Garage

2 1/2-Story House

Paved Drive

1 1/2-Story House

Paved Drive

TO LITTLE BOARS HEAD

3 1/2-Story House #206

Paved Drive

Jeppesen, Russell W.

Demarest, John J. & Foe Barrett Trustees of Demarest F.

Genest

1 1/2-Story House

Paved

1 1/2-Story House #206a

Paved

Grave

MCC Realty Trust Mary Curilla Trustee

Paved

9' Drive

Woods

Boston & Maine R.R.

12A

25

Coburn Realty Investors I

AREA DISTURBED FOR DRAINAGE PIPE INSTALLATION SHALL RECEIVE LANDSCAPE TREATMENT AS PER TYPICAL SECTIONS SHEET. THIS TREATMENT SHALL BE PLACED OVER A 4" DEEP LAYER OF GRAVEL (ITEM 304.2)

20

18

17

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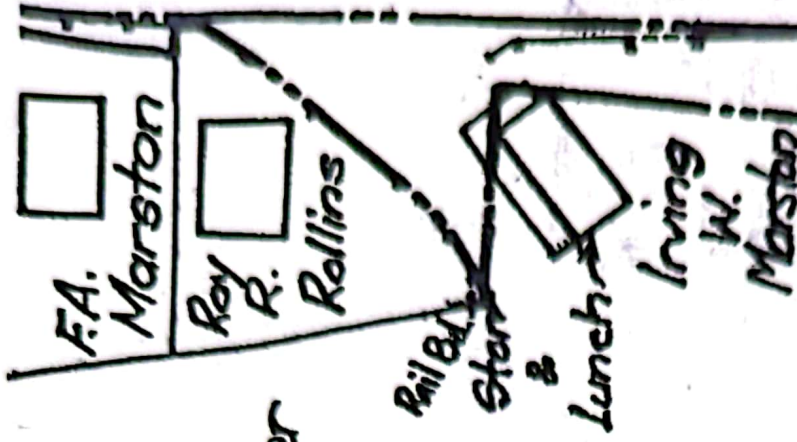
-242

AFTER
DEPOT
MOVED

Geo. A. Bachelder

Geo. A. Bachelder

AREA = APPROX 32,185 SQ. FT. ±



FORMER
TRACK - TIES
STILL
THERE

NORTH HAMPTON

STORAGE

EVIDENCE
THAT PLATFORM
EXTENDED
BEYOND
ROOF

← THERE
IS PAVEMENT
HERE NOW

ALBEIT
BEFORE
DEPOT
WAS MOVED

562' ± 7' E

125.6'

